

***DOVER CODE***

**ZONING**

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**[HISTORY: Adopted by the City Council on 05-23-1979 as Ord. No. 15-79; Amended on 09-13-2013 by Ord. No. 2013.08.14-12; Amendments noted where applicable.]**

GENERAL REFERENCES - PLANNING BOARD – See Ch. 41. Site Plan Review- See Ch. 149. Streets and SIDEWALKS – See Ch. 152. Subdivision of Land – See Ch. 155.

## **ARTICLE I**

### **GENERAL PROVISIONS**

#### **170-1. Title.**

This chapter shall be known and may be cited as the "Zoning Ordinance of the City of Dover, New Hampshire."

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### **170-2. Authority.**

This chapter is adopted pursuant to the authority granted by RSA 674:16.

### **170-3. Purpose.**

This chapter is an element of the Dover Comprehensive Development Plan and is designed to promote the health, safety, and the general welfare of Dover's residents by serving to facilitate the adequate provision of transportation, water, sewer, schools, parks and other public requirements; to encourage the maintenance of Dover's economic and aesthetic quality of life; and to encourage the most appropriate use of land throughout the City of Dover.

### **170-4. Interpretation.**

The provisions of this chapter shall be interpreted to be the minimum requirements adopted for the promotion of the health, safety, morals and the general welfare of the City of Dover. The provisions of this chapter are not intended to repeal or in any way impair or negate any other lawfully adopted ordinance, regulation or rule. Whenever the regulations made under the authority hereof differ from those prescribed by any ordinance or regulation, that provision which imposes the greater restriction shall govern.

### **170-5. Applicability.** [Amended on 06-10-87 by Ord. No. 13-87.]

All BUILDINGS or STRUCTURES hereafter erected, reconstructed, altered, enlarged or relocated or all future use of premises in the City of Dover shall be in conformity with the provisions of this chapter. This chapter shall not apply to existing BUILDINGS or STRUCTURES, nor to the existing use of any BUILDING or STRUCTURE or of land to the extent to which it is used at the time of enactment of this chapter. Furthermore, if the PLANNING BOARD has formally accepted an application for development prior to the first legal notice of a proposed change to this chapter, the Building Official shall not withhold a building permit, and the proposed regulation shall not affect the accepted application.

## **ARTICLE II**

## **WORD USAGE**

**170-6. Definitions.** [Amended on 9-24-80 by Ord. No. 15-80; Amended on 6-10-87 by Ord. No. 13-87; Amended on 9-14-88 by Ord. No. 15-88; Amended on 11-30-88 by Ord. No. 24-88; Amended on 08-01-90 by Ord. No. 8-90; Amended on 04-03-91 by Ord. No. 01-91; Amended on 09-01-93 by Ord. No. 20-93; Amended on 09-15-93 by Ord. No. 19-93; Amended on 10-20-93 by Ord. No. 28-93; Amended on 08-24-94 by Ord. No. 09-94; Amended on 03-18-98 by Ord. No. 02-98; Amended on 02-17-99 by Ord. No. 25-98; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 03-19-2003 by Ord. No. 05-03; Amended on 03-21-2007 by Ord. No. 01-07; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 10-10.27-13; Amended on 02-22-2012 by Ord. No. 2012.01.25; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

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- A. For the purposes of this chapter, the present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular. The word "shall" is mandatory; the word "may" is permissive; the words "used" or "occupies" include the words "intended, designed or arranged to be used or occupied," and certain terms or words shall be interpreted as follows:
- B. Words and terms appearing in CAPITAL LETTERS throughout this chapter shall have the meanings indicated:

**ABANDONED SIGN** means any sign that does not display a well-maintained message for a consecutive one-hundred eighty (180) day period, and/or the owner of said sign cannot be located after reasonable efforts have been made, and/or said sign is no longer fully supported by the structure designed to support the sign for a consecutive one-hundred eighty (180) day period, and/or the sign no longer advertises bona fide business and/or products sold for a consecutive one-hundred eighty (180) day period. The Zoning Administrator shall direct the removal of any sign which meets this definition.

**ABUTTER** means:

- (1) The owner of record of a parcel of land located in New Hampshire and adjoins or is directly within two hundred (200) feet (including land across the street or waterway) of the proposed site under consideration by the PLANNING BOARD.
- (2) For the purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person or entity who is able to demonstrate that his land will be directly affected by the proposal under consideration.
- (3) In the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356-B: 3, XXIII. Additionally, the individual owners of units within the association, which are located within two hundred (200) feet of the common property line shall be notified only by first class mail.
- (4) For purposes of notification and receiving testimony, abutter means all affected towns and the regional planning commission in the case of a development having regional impact, as determined by the PLANNING BOARD.

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- (5) For purposes of notification, abutter ownership information for LOTS located in Dover, shall be obtained through the City's Tax Assessment Office.

**ACCESSORY DWELLING UNIT** means a secondary DWELLING UNIT (a) attached and subordinate to a SINGLE FAMILY DWELLING or (b) constructed above a detached garage that is accessory and subordinate to a SINGLE FAMILY DWELLING. See Section 170-24 for the ACCESSORY DWELLING UNIT regulations.

**ACCESSORY STRUCTURE** means a STRUCTURE with a minimum FLOOR AREA of one hundred (100) square feet which exists on the same LOT and within the same zoning district as the PRINCIPAL BUILDING and which shall be customarily incident and subordinate to the PRINCIPAL BUILDING subject to the provisions of Chapter 170-2010 E.

**ACCESSORY USE** means a use existing on the same LOT and within the same zoning district as the principal use which shall be customarily incident and subordinate to the principal use, subject, however, to the provisions of 170-2010E.

**ADULT BOOKSTORE AND/OR VIDEO STORE** means a place of business that devotes more than fifteen percent (15%) of the total display, shelf, rack, table, stand or FLOOR AREA, for the display and sale of the following: [Added]

- (1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMS or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or
- (2) Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-B:1, other than birth control devices.

An **ADULT BOOKSTORE** and/or VIDEO STORE does not include an establishment that sells books, periodicals or videos as an incidental or accessory part of its principal stock and trade and does not devote more than fifteen percent (15%) of the total FLOOR AREA of the establishment to the sale of books, periodicals or videos.

**ADULT CABARET** means a night club, bar, restaurant or similar establishment which during a substantial portion of the total presentation time, features live performances that meet the definition of "harmful to minors" and/or "a sexual conduct" as set forth in RSA 571-B:1, and/or shows films, motion pictures, video



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cassettes, slides or other photographic reproductions, which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

**ADULT DAY CARE** means a facility used for the care of three (3) or more adults for less than twenty four (24) hours per day who are in need of supervision or assistance with daily living activities. The facility may provide for dining, recreation activities, education and counseling services, and ACCESSORY USEs related to the care of adults in need.

**AGRICULTURE** - See RSA 21:34-a.II. AGRICULTURE shall not include marketing or selling at wholesale or retail, except where permitted as part of a ROADSIDE FARM STAND or where the retail sale of agricultural or farm products raised on site is a permitted use. One single family dwelling shall be permitted as an accessory to the principle use.

**ALTER** or **ALTERATIONS** means any change involving the structural frame of a BUILDING or use of a BUILDING.

**ALTERNATIVE TOWER STRUCTURE** means the use of STRUCTURES such as man-made trees, clock towers, bell steeples, rooftops on BUILDINGS five (5) stories or more, light poles, and similar Alternative-design mounting STRUCTURES that camouflage or conceal the presence of ANTENNAS or towers and their appurtenances.

**ANTENNA** means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, repeater, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

**APPLICANT** means any person, agent, firm, association, partnership or corporation that makes application to a land use board, pursuant to the rules and regulations of this chapter.

**ASSESSED PROPERTY** means any land or BUILDINGS comprising NEW DEVELOPMENT that is subject to an IMPACT FEE ASSESSMENT under this Article.

**ASSESSMENT** means a notification issued by the City of Dover, its PLANNING BOARD, or its Building Inspector, which states the amount of an IMPACT FEE due on an ASSESSED PROPERTY and the responsibilities, conditions or schedules pertinent to the process and timing of IMPACT FEE payments to the City.

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**ASSISTED LIVING FACILITY** means a facility, licensed under RSA 151-E, that provides housing and supportive services and care for more than twelve (12) elderly residents who require assistance with daily living activities but do not require the skilled nursing and medical care provided in a nursing home. Such supportive services include the provision of meals, housekeeping, laundry, transportation, daily personal care, dispensing of medications and twenty-four (24) hours per day staffing. An assisted living facility includes a community dining room in which meals are provided to all residents, and each individual assisted living unit may also have a kitchenette. Other than any accommodations provided for use by the facility's staff, only assisted living units are permitted as part of an assisted living facility.

**ASSEMBLY HALL** means a BUILDING or a portion of a BUILDING, not to exceed five thousand (5,000) square feet, used for groups of people to gather for an event or regularly scheduled program. Assembly Halls include but are not limited to SERVICE CLUB, religious institutions, cultural and educational lecture/performance halls, banquet halls, and similar facilities.

**AUTO SERVICE** means a place of business which offers as a service the repair of automobiles. Such "AUTO SERVICE" place shall not be construed to be a VEHICLE REFUELING /RECHARGING STATION.

**BED AND BREAKFAST** means a residential STRUCTURE consisting of nine (9) or less bedrooms rented on a temporary short term basis for overnight sleeping purposes. Said facility shall have common eating and living areas and provide on-site management on a twenty-four (24) hour basis. Breakfast shall be the only meal served and shall be served to registered guests only.

**BERM** means a mound of EARTH that may contain stumps of sufficient height to serve as sight, sound, sand and dust screening of operations in an EXCAVATION SITE.

**BLOCK** means a tract of land bounded by STREETS or by a combination of STREETS and public land, railroad rights of way, waterways or other barriers to the continuity of a development.

**BLOCK CORNER** means where two public streets meet on a BLOCK.

**BLOCK FACE** means the aggregate of all the BUILDING facades on one side of a BLOCK.

**BUILD TO LINE** means a line parallel to the STREET right-of-way line at any story level of a BUILDING and representing the minimum distance which all or

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any part of the BUILDING is set back from said right-of-way line. Front porches, stairs and handicap ramps may extend beyond the build-to line up to half their depth.

**BUILDING** means any STRUCTURE built for the support, shelter or enclosure of persons, animals, chattels or property of any kind and which is constructed and permanently affixed on the land. Such "BUILDING" includes open porches, open breezeways and any roofed areas. This in no way is to be construed to include a trailer, MANUFACTURED HOUSE or any other like product. For the purposes of measuring SETBACKS, eaves and uncovered decks, porches and steps may encroach into the side, REAR and front SETBACKS for a distance of up to three (3) feet.

**BULK** means a term used to indicate the physical size, SETBACKS, and location of a BUILDING upon a LOT.

**BUSINESS FLOOR AREA** means that area, leased or occupied by a business, excluding hallway(s) or shared BUILDING/tenant facilities.

**BUSINESS FRONTAGE** means the length along the GROUND FLOOR of a BUILDING front, having FRONTAGE on the STREET, which is occupied by a separate and distinct principal use; or the length along the GROUND FLOOR of a BUILDING side, having FRONTAGE on a STREET, which is occupied by a separate and distinct principal use or by the same principal use which occupies the front of said BUILDING.

**CERTIFIED SOIL SCIENTIST** means a person who, by reason of special knowledge of pedological principles acquired by professional education and practical experience as specified by RSA 310-A:84, is qualified to practice soil science and who has been duly certified by the PLANNING BOARD of Natural Scientists.

**CERTIFICATE OF OCCUPANCY** – See Chapter 68 of the Code of the City of Dover, titled “Building Construction”, Section 68-15

**CHILD CARE FACILITY** means a non residential facility used for the care of children for periods of less than twenty-four (24) hours per day, and/or the provision of educational services commonly associated with preschool, nursery schools or kindergartens. A CHILD CARE FACILITY requires Technical Review Committee review and is subject to possible Site Review and Planning Board approval per Section 149-4.C.3 of the Site Review Regulations.

**CHILD CARE HOME** means an occupied single family dwelling in which child day care is provided for less than twenty four (24) hours per day, except in

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emergencies. A CHILD CARE HOME is subject to the CUSTOMARY HOME OCCUPATION requirements and requires a CUSTOMARY HOME OCCUPATION Certificate of Use. There are two types of CHILD CARE HOMES, as follows:

- (1) Group Child Care Home is a child day care for seven (7) to twelve (12) preschool aged children from one or more unrelated families. The twelve (12) children shall include all children residing with the caregiver in the home, except children ten (10) years of age or older. In addition to the twelve (12) children, up to five (5) children enrolled in a full day school program may also be cared for up to five (5) hours per day on school days and all day during school holidays. Applications require Technical Review Committee review, are subject to possible Site Review and Planning Board approval per Section 149-4.C.3 of the Site Review Regulations.
- (2) Family Child Care Home is a child day care for up to six (6) preschool aged children from one or more unrelated families. The six (6) children shall include all children residing with the caregiver in the home, except children ten (10) years of age or older. In addition to the six (6) children, up to three (3) children enrolled in a full day school program may also be cared for up to five (5) hours per day on school days and all day during school holidays. A Family Child Care Home for up to three (3) children (at any one time and not including the provider's own children) shall not require a Customary Home Occupation Certificate of Use and does not require Technical Review Committee review.

**CIVIC BUILDING** means a BUILDING operated by not-for-profit organizations dedicated to arts, culture, education, recreation, government, transit, and municipal parking, or for use approved by the legislative body.

**CIVIC SPACE** means an outdoor area dedicated for public use.

**COLLECTION** means the actual delivery of payment of an ASSESSMENT of an IMPACT FEE to the City of Dover on behalf of an ASSESSED PROPERTY.

**COMMENCEMENT OF CONSTRUCTION** means the beginning of the physical construction of an approved STRUCTURE. Said construction shall include the erection of any portion of a STRUCTURE above or below grade level.

**COMMERCIAL EXCAVATION** means EXCAVATION of EARTH intended for commerce, excluding EXCAVATION that is strictly conducted for the purpose of ALTERATIONS, renovation, improvement or construction to the property on which the EXCAVATION takes place. Any material leaving the

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property for whatever reason is considered to be a commercial operation, except agricultural activities, as defined by RSA 21:34-a.

**COMMERICAL PARKING FACILITY** means an area of OFF-STREET PARKING, where, for a fee, or permit, motor vehicles may be stored for the purpose of temporary, daily, weekly, or overnight OFF-STREET PARKING. Said facility may provide shuttle or park-n-ride services.

**COMMERCIAL RECREATION** means leisure time activities conducted at prescribed places, sites, or fields as a principal use, in order to obtain profit for a private group, organization, or individual. For the purpose of this ordinance, COMMERCIAL RECREATION may include but not be limited to: (a) mechanical and/or electronic operating games (b) animated mechanical devices and/or rides (c) live entertainment; and (d) food concessions will be allowed by permit.

**COMMON YARD** means a planted private FRONTAGE wherein the facade is set back from the front property line.

**CONGREGATE CARE FACILITIES** means a residential facility for elderly persons containing individual, one (1) and two (2) bedroom units. Each unit may also have a kitchenette. The facility shall contain common dining facilities and amenities such as housekeeping, transportation and organized social and recreational activities, and may include limited medical services on site. This facility is intended for and solely occupied by persons sixty-two (62) years of age or older and thereby qualifies as “housing for older persons” under state law

**CONSERVATION LOT** means a LOT created solely for the purpose of land conservation. The CONSERVATION LOT must contain no less than fifty percent (50%) developable uplands, but will have no DEVELOPMENT RIGHTS. The CONSERVATION LOT may be owned by a private, nonprofit organization, which has as its purpose the preservation of OPEN SPACE, or dedicated to a public entity. CONSERVATION LOTS must meet the required minimum LOT size and SETBACKS. CONSERVATION LOTS do not need to meet the minimum FRONTAGE requirements. CONSERVATION LOTS must be created following the regulations outlined in Chapter 155, Subdivision of Land.

**CONTIGUOUS** means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, wholly within the City, except in the case of STATIONARY MANUFACTURING PLANTS, whose perimeter is not defined by the City’s boundaries.

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**CONTINUING CARE COMMUNITY FACILITY** means a residential development that provides multiple elements of adult living, including independent living units, assisted living units and skilled nursing care, enabling residents to live at a single location as their medical needs change over time. This facility is licensed pursuant to RSA 420-D and includes common dining, recreation and health facilities and other common areas; provides services such as medical care, programmed social activities; and may include limited accessory retail and personal services. This facility is intended for and solely occupied by persons sixty-two (62) years of age or older and thereby qualifies as “housing for older persons” under state law.

**COUNTRY CLUB** means a nonprofit establishment involving the use of a golf course, swimming pool or tennis courts and a STRUCTURE designed as a center for these activities within which food and drink may be served to members of said club and their guests. The term "COUNTRY CLUB" shall not be so construed as to include within its meaning any operation conducted with a profit-making intent.

**COVERAGE** means the percentage of area of a LOT which is occupied by the physical limits of a BUILDING or BUILDINGS. Roofed area to the extent of the drip line shall constitute the physical limits of a BUILDING.

**COVER CROP** means vegetation designed to prevent erosion of the soil.

**CUSTOMARY HOME OCCUPATION** means an occupation carried on as a secondary use in a DWELLING UNIT or accessory BUILDING by the occupant of such unit.

**DEVELOPMENT RIGHTS** means the legal claim to construct or develop specified land uses within specified densities and/or dimensional limits as granted by the City of Dover Zoning Ordinance.

**DIMENSION STONE** means rock that is cut, shaped or selected for use in BLOCKS, slabs, sheets, or other construction units of specified shapes or sizes and is used for external or interior parts of BUILDINGS, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. DIMENSION STONE includes quarry BLOCKS from which sections of DIMENSION STONE are to be produced. DIMENSION STONE does not include EARTH as defined below.

**DRIVE-IN SERVICE** means service whereby the customer need not leave his vehicle in order to obtain the product offered for sale.

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**DWELLING, MULTI-FAMILY** means a BUILDING containing more than four (4) DWELLING UNITS.

**DWELLING, SINGLE-FAMILY** means a detached BUILDING containing one (1) DWELLING UNIT only.

**DWELLING UNIT** means one or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the DWELLING UNIT for exclusive use of a single family maintaining a household.

**EARTH** means sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.

**EDUCATIONAL INSTITUTION, POST SECONDARY** means an institute of higher education that provides a curriculum of academic instruction beyond the high school level, is licensed by the State of New Hampshire, and is accredited by an approved agency.

**EDUCATIONAL INSTITUTION, K-2012** means a facility, licensed by the State of New Hampshire, that provides curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools.

**ELDERLY ASSISTED CARE HOME** means a residential facility permanently housing six (6) to twelve (12) elderly residents with common dining facilities and ACCESSORY USES typically needed by elderly persons. The Zoning Board of Appeals may increase the number of residents through the granting of a special exception.

**EXCAVATION** means a land area that is used, or has been used, for the commercial taking of EARTH, including all slopes.

**EXCAVATION AREA** means the area within an EXCAVATION SITE where EXCAVATION has occurred or is eligible to occur under the provisions of RSA 155-E. This is also known as the pit area.

**EXCAVATION SITE** means any area of CONTIGUOUS land in common ownership upon which EXCAVATION takes place.

**EXISTING EXCAVATION** means any EXCAVATION that lawfully existed as of August 24, 1979, from which EARTH material of sufficient weight or volume

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to be commercially useful had been removed during the two (2) year period before August 24, 1979.

**EXISTING TOWERS AND ANTENNAS** means any TOWER or ANTENNA lawfully constructed or permitted prior to the adoption of this ordinance. Additionally, any TOWER or ANTENNA lawfully constructed in accordance with this ordinance that predates an application currently before the PLANNING BOARD.

**EXPANSION** (pertaining to EXCAVATIONS) means

(1) of EXISTING EXCAVATIONS means EXCAVATION beyond the limits of the City and the area which on 8/24/79 had been CONTIGUOUS to and in common ownership with the EXCAVATION SITE and has been appraised and inventoried for tax purposes as part of the same tract as the EXCAVATION SITE.

(2) of STATIONARY MANUFACTURING PLANTS means to any CONTIGUOUS lands which were in common ownership with the site of the plant on 8/4/89.

**EXTENSION, BUILDING** means any action which shall cause the FLOOR AREA or volume of a STRUCTURE to be increased.

**EXTENSION, USE** means the enlargement of a business, industrial or residential activity beyond the limits in use at the time this chapter was passed.

**FAA** means an acronym meaning Federal Aviation Administration.

**FAMILY** - [Repealed on 08-01-90 by Ord. No. 8-90]

**FARM** - See RSA 21:34-a.I. See also definition of AGRICULTURE

**FARM ANIMALS** means animals that are commonly raised or kept in an agricultural setting, including, but not limited to, chickens, roosters, turkeys, ducks, pigs, sheep, goats, horses, cows, cattle, llamas, emus, ostriches, donkeys, mules, buffalo, bison, alpacas, elk, deer and reindeer; provided, however, that chickens, sheep or goats, totaling six (6) or fewer, shall not be considered to be included.

**FARM ANIMALS FOR FAMILY USE** means animals commonly raised or kept by a family for non-commercial purposes on a LOT containing a one or two family dwelling. Includes chickens, sheep or goats totaling six (6) or fewer, but does not include roosters.



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**FCC** means an acronym meaning Federal Communications Commission.

**FENCE** means a freestanding STRUCTURE of metal, masonry, composition of wood or any combination thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

**FLASHING SIGN** means any directly or indirectly illuminated SIGN which changes the intensity of illumination so as to result in changes in light, color, director or animation. Included in this definition shall be electronic changeable message boards or SIGNS of similar technologies, excluding those deemed necessary for the public safety and welfare by Federal, State or municipal authorities.

**FLOOR AREA** means the sum of the gross horizontal areas of all floors of any BUILDING or BUILDINGS on a LOT measured from the exterior walls. In particular, the "FLOOR AREA" shall include:

- (1) In dwellings, any basement space designed to be used for residential purpose.
- (2) In other than dwellings, any basement or cellar space used for any purpose.
- (3) In all BUILDINGS, interior balconies, mezzanines, roofed porches or terraces and all spaces other than basement or cellar spaces with structural head ROOM of at least seven (7) feet.

**FLOOR RATIO** - [Repealed 08-01-90 by Ord. No. 8-90]

**FREESTANDING SIGN** means a SIGN permanently erected on a freestanding frame, mast or pole and not attached to any BUILDING. A-frame SIGNS shall not be considered freestanding but rather a TEMPORARY PORTABLE SIGN. (See the definition of "TEMPORARY PORTABLE SIGN.")

**FRONTAGE** means the linear distance measured along the front LOT LINE between the points of intersection with the side LOT LINES. "FRONTAGE" along cul-de-sacs shall be the linear distance at the appropriate FRONT YARD BUILDING set back depth from the front LOT LINE between the points of intersection with the side LOT LINES. For the purpose of measurement, LOT "FRONTAGE" shall be continuous and measured along the joining boundary of the front LOT LINE and a public right-of-way.

**FRONTAGE**, in the CBD means the area between a BUILDING facade and the public STREET, inclusive of it's built and planted components.

## ***ZONING***

**GALLERY** means a private FRONTAGE conventional for retail use wherein the facade is aligned close to the front property line with an attached cantilevered shed or lightweight colonnade overlapping the SIDEWALK.

**GENERAL FARMING** means the pursuit of those activities normally associated with the raising of a crop or the care of animals for agricultural purposes.

**GROUND FLOOR** means the STREET level floor of a STRUCTURE.

**GROUP HOME FOR MINORS** means a group boarding home for minor children and others attending Grades K - 12 which is issued a general or intermediate license by and operated in accordance with standards promulgated by the State of New Hampshire Department of Health and Welfare. Such use may include ACCESSORY USEs such as educational and counseling programs which are directly related to the primary purpose of the home.

**HAZARDOUS WASTE/MATERIAL** means a material, waste or combination of materials or wastes which, because of the quantity, concentration or infectious characteristics, may cause or significantly contribute to illness or present a substantial hazard to health, safety or welfare or to the environment.

**HEIGHT** when referring to a telecommunications TOWER or other STRUCTURE means the distance measured from ground level to the highest point on the TOWER or other STRUCTURE or appurtenance, even if said highest point is an ANTENNAS or other appurtenance.

**HEIGHT OF BUILDING** means the vertical distance measured from the grade level to the highest level of the roof surface or front PARAPET, whichever is greater. Television and radio receiver ANTENNAS and photovoltaic systems as well as church steeples shall not be included in this calculation.

**HEIGHT RATIO** - [Repealed 08-01-90 by Ord. No. 8-90]

**HIGH INTENSITY SOIL MAP (HIS)** means a map prepared using the methods prescribed by the Society of Soil Scientists of Northern New England, in the publication High Intensity Soil Maps for New Hampshire, January 1987, as amended.

**HOME BASED AGRICULTURAL ACTIVITIES** means the sale of products associated with raising poultry/bees/or like animals, or harvesting of herbs, flowers or vegetables/fruit. Products must be grown on-site and may be sold in either in raw or value added forms.

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**HOTEL** means a BUILDING consisting of ten (10) or more ROOMS accessed by a common hallway and designed for, or used commercially as temporary living quarters for persons who are lodged with or without meals.

**IMPACT FEE** means a fee or ASSESSMENT imposed upon development, including subdivision, BUILDING construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the City of Dover or the Dover School District, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and RIGHTS OF WAY; municipal office facilities; public school facilities; public safety facilities; solid waste COLLECTION, transfer, recycling, processing and disposal facilities; public library facilities; and PUBLIC RECREATIONAL FACILITIES not including PUBLIC OPEN SPACE.

**INTERMITTENT STREAM** means a stream that flows for sufficient times of the year to develop and maintain defined channels but which may not flow during dry portions of the year.

**JUNKYARD** means an open area where waste, used or secondhand materials are brought, sold, exchanged, stored, baled, packed, dissembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles. The term "JUNKYARD" shall not include uses established entirely within enclosed BUILDINGS.

**JUNKYARD, MOTOR VEHICLE** means includes any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two (2) or more unregistered motor vehicles which are no longer operable or in condition for legal use on the public highways or used parts of motor vehicles or old iron, metal, glass, paper, cordage or other waste or discarded or secondhand material which has been a part or intended to be a part of any motor vehicles, the sum of which parts or materials shall be equal in BULK to two (2) or more motor vehicles. "Motor vehicle JUNKYARD" shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn materials which are parts of a motor vehicle or cut up the parts thereof.

**KENNEL** means any BUILDING(s) or land operated as a business for the boarding, breeding, training, or selling of five (5) or more dogs, cats or other household pets.

## ***ZONING***

**LANDSCAPE AREA** means the area unoccupied by pavement or STRUCTURES and open to the sky in either a landscaped or grassed condition. May include recreational fields, lawns, and public parks that do not possess significant conservation features.

**LIGHT INDUSTRY** means all manufacturing and assembly processes carried on completely within a STRUCTURE, and involving no permanent outside storage of equipment or materials (except as a customary ACCESSORY USE in connection with the permitted activities with the STRUCTURES), unless such storage is approved by the Dover PLANNING BOARD. This term shall not be interpreted to include any industry, the operations of which shall result in Significant objectionable noise, glare, vibration or odor which would constitute a NUISANCE in an industrial district and which exceed the maximum levels of adjacent activities.

**LOADING BERTH** means a berth designed for the on-loading and off-loading of trucks and other commercial vehicles.

**LOT** means a parcel of land which fronts on and has ingress and egress by means of a public vehicular right-of way and is occupied by, or is intended to be occupied by one (1) PRINCIPAL BUILDING and its accessory buildings or uses customarily incidental to it, together with such OPEN SPACES and yards as are required by this chapter. More than one (1) PRINCIPAL BUILDING may be placed on a LOT located in the Central Business District. More than one (1) PRINCIPAL BUILDING may also be placed on a LOT in all other districts with PLANNING BOARD approval for non-residential developments, multi-family dwelling developments, and OPEN SPACE subdivisions

**LOT, CORNER** means a LOT abutting upon two (2) or more STREETS at their intersection. The side of the corner lot that fronts on the street that provides the address for the property shall be considered the front, and the side(s) of the CORNER LOT that front on any other streets shall be considered the abut-a-street.

**LOT LINE** means a line of record bounding a LOT which divides one LOT from another LOT or from a public or private STREET or any other public space.

**LOT WIDTH** means the width of a LOT along a straight line parallel to the front STREET line and lying at a distance from said STREET line equal to the required minimum FRONT YARD SETBACK for said LOT.

**MANUFACTURED HOUSING** means any structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in

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width and forty (40) body feet or more in length, or when erected on site, is three hundred and twenty (320) square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. MANUFACTURED HOUSING shall not include presite built housing as defined in RSA 674:31-a.

**MANUFACTURED HOUSING PARK** or **MOBILE HOME PARK** means any plot of ground upon which two (2) or more MANUFACTURED HOUSING, occupied for dwelling or sleeping purposes, are located.

**MANUFACTURED HOUSING SUBDIVISION** [Repealed on 11-28-2012 by Ord. No. 2012.11.14-24.]

**MARINA** means a facility for storing, servicing, fueling, berthing, securing and launching of private pleasure marine craft that may include the sale of fuel and incidental supplies for boat owners, crews and guests.

**METEOROLOGICAL TOWER (MET TOWER)** means the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a SMALL WIND ENERGY SYSTEM.

**MODIFICATION** in relation to a SMALL WIND ENERGY SYSTEM means any change to the system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

**MOTEL** means a BUILDING consisting of ten (10) or more ROOMS having direct outside access and designed for, or used commercially as temporary living quarters for persons who are lodged with or without meals.

**NEIGHBORHOOD** means a grouping of STRUCTURES with more clearly evident relationship to one another than to other STRUCTURES in the community.

**NEIGHBORHOOD STORE** is any retail store containing a maximum of fifteen hundred (1,500) square feet of enclosed space with no on-site parking permitted or required.

## ***ZONING***

**NET METERING** means the difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

**NEW DEVELOPMENT** means an activity that results in:

- (1) The creation of a new DWELLING UNIT or units; or
- (2) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of DWELLING UNITS; or
- (3) Construction resulting in a new non-residential BUILDING or a net increase in the FLOOR AREA of any non-residential BUILDING; or
- (4) The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of IMPACT FEE ASSESSMENTS.

**NEW DEVELOPMENT** shall not include the replacement of an existing MANUFACTURED HOUSE or the reconstruction of a STRUCTURE that has been destroyed by fire or natural disaster where there is no change in its size, density or type of use, and where there is no net increase in demand on public capital facilities.

**NONCONFORMING BULK** means a BUILDING or use of land is nonconforming as to BULK if it does not conform to the prescribed BULK regulations of the district in which it is located.

**NONCONFORMING USE** means a lawful use that does not conform as to BULK if it does not conform to the prescribed BULK regulations of the district in which it is located.

**NUISANCE** means a factor generally recognized to be undesirable, such as odor, noise, glare or vibration.

**NURSING HOME** means a residential facility for elderly persons that is licensed by the State, containing a common dining facility and ACCESSORY USES typically needed by elderly residents.

**OFFICE** means a place of business which may fall under the following categories:

## ***DOVER CODE***

*Accessory.* An office facility that is incidental and accessory to another business or sales activity that is the primary use of the structure or site.

*Administrative Business Professional.* An establishment providing direct, "over-the-counter" services to consumers (e.g., insurance agencies, real estate offices, travel agencies, utility company offices, etc.) and office-type facilities occupied by businesses providing professional services and/or engaged in the production of intellectual property. This use includes: accounting, auditing and bookkeeping services, advertising agencies, airline, lodging, chain, and rental car company reservation centers, architectural, engineering, planning and surveying services, attorneys, legal services, commercial art and design services, computer software and hardware design, counseling services, court reporting services, data processing services, detective agencies and similar services, educational, scientific and research organizations, employment, stenographic, secretarial and word processing services, insurance claim processing, literary and talent agencies, mail order and e-commerce transaction processing, management and public relations services, media postproduction services, photography and commercial art studios, police facility used as an office where there are no jail detention facilities or storage of vehicles except the parking of police cars, psychologist, telecommunications facility design and management, telemarketing, writers and artists offices;

*Government.* An administrative, clerical, or public contact office of a government agency, including postal facilities, together with the incidental storage and maintenance of vehicles.

*Medical.* An office or health facility providing health services including, without limitation, preventative and rehabilitation treatment, diagnostic services, testing and analysis. This use includes offices providing medical, dental, surgical, rehabilitation, podiatral, optometric, chiropractic and psychiatric services, and medical or dental laboratories incidental to these offices, but exclude inpatient services and overnight accommodation.

**OFF-SITE IMPROVEMENTS** means those public facility improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision PLAT or site plan approval by the PLANNING BOARD. Such OFF-SITE IMPROVEMENTS shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development.

## ***ZONING***

**OFF STREET PARKING** means parking facilities located in city or privately owned LOTS and STRUCTURES.

**OPEN SPACE** means land that is not built upon or substantially altered by human activity including open fields, such as meadows and farmland, and forest as well as undeveloped shorelands and waterbodies.

**ORDINARY HIGH WATER MARK** means the line on shore, running parallel to the main stem of the river, established by the fluctuations of the water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristic of the surrounding areas.

**OUTBUILDING** means an accessory BUILDING, usually located toward the REAR of the same LOT as a PRINCIPAL BUILDING, and sometimes connected to the PRINCIPAL BUILDING.

**PARAPET** means a low protective wall or railing along the edge of a raised STRUCTURE such as a roof or balcony.

**PARKING SPACE** means an off-Street area available with paved surface, accessible and suitable for parking one (1) motor vehicle.

**PERSONAL SERVICE ESTABLISHMENT** means a commercial use, the primary concern of which is the rendering of services rather than the sale of products. "Primary concern" shall mean less than fifty percent (50%) of the revenues from such commercial use shall be gained from the sale of products. A "PERSONAL SERVICE ESTABLISHMENT" shall not be construed to include a gasoline service station.

**PLANNING BOARD** means the PLANNING BOARD of the City of Dover.

**PLAT** means a map or plan of a subdivision or a site plan, prepared by a registered surveyor or engineer in compliance with all applicable provisions of the Zoning Ordinance (Ch. 170), the Site Review Regulations (Ch. 149), and the Subdivision Regulations (Ch.155) of the City of Dover

**PORCH AND FENCE** means a private FRONTAGE set back from the front property line with an attached porch permitted to encroach beyond the BUILD TO LINES.



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**POWER GRID** means the transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

**PRINCIPAL BUILDING** means the main BUILDING on a LOT, usually located toward the FRONTAGE.

**PROJECTING SIGN** means a SIGN attached to a BUILDING with the plane of the SIGN at an angle to the plane of the wall of the BUILDING.

**PUBLIC ART** means works of art in any media that has been planned and executed with the specific intention of being sited or staged in the physical public domain, usually outside and accessible to all.

**PUBLIC OPEN SPACE** means a parcel of land essentially unimproved and principally intended for OPEN SPACE preservation, natural resource conservation, or similar uses. For the purposes of this Article, City parks that do not include “PUBLIC RECREATION facilities” constitute PUBLIC OPEN SPACE.

**PUBLIC RECREATION** means leisure time activities open to the public, subject to reasonable limitations as to participation, and conducted at prescribed places, sites or fields by non-profit corporations or charitable organizations. The non-profit organization or charitable organization may either rent or own the site. Food concessions will be allowed by permit.

**PUBLIC RECREATION FACILITIES** means the land and facilities owned or operated by the City of Dover, other than PUBLIC OPEN SPACE, that are used or designed for the conduct of recreational sports or recreation programs, and which include equipment or substantial improvements to the land to provide indoor or outdoor PUBLIC RECREATION opportunities. PUBLIC RECREATION facilities may also include those portions of PUBLIC OPEN SPACE parcels that are improved with developed trail systems for uses such as hiking or cross country skiing.

**PUBLIC SPACE** means open to public view or access.

**PUBLISHING FACILITY** means a STRUCTURE or part of a STRUCTURE, with office space and production facilities, which is used for producing newspapers, magazines, books and/or other related published materials. For the purpose of this definition, production facilities shall include a printing press and/or similar equipment.

**REAR** means the private back portion of a property.

## ***ZONING***

**RECEIVING AREA** means a defined area within a TDR DISTRICT to which DEVELOPMENT RIGHTS are transferred resulting in more efficient and intense use of suitable development sites.

**RECLAMATION** means the restoring of an EXCAVATION SITE to a standard at least equal to those outlined in Section 170-29.8.

**REGULATING PLAN** means a zoning map or set of maps that shows the sub-districts subject to regulation by the form based code.

**REVOCATION** means the revoking of the approved extraction permit by the PLANNING BOARD. The REVOCATION requires ceasing operations until such time as the owner or operator can bring the operation into compliance, and subsequently reapply for permitted status with the PLANNING BOARD at a regular meeting using standard application steps as outlined in this article.

**RIGHTS OF WAY** means a public or private area that allows for the passage of people, goods, and/or utilities. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and under the control of a public agency.

**RIGHT-OF-WAY LINES** means the lines that form the boundaries of the RIGHT-OF-WAY.

**ROOM** means an unsubdivided portion of the interior of a DWELLING UNIT, excluding bathrooms, closets, hallways and service porches.

**ROADSIDE FARM STAND** means an accessory use where permitted AGRICULTURE products grown on site are sold.

**ROOMING HOUSE** means any BUILDING in which ROOMS are rented, leased or otherwise made available for compensation to not more than ten (10) persons, for longer than one night, but not requiring a long term lease. Said ROOMS being for a sleeping purpose and containing communal bathroom facilities and cooking facilities.

**SENDING AREA** means a defined area within a TDR DISTRICT from which DEVELOPMENT RIGHTS are transferred, resulting in the permanent preservation of lands possessing significant conservation features.

**SERVICE CLUB** means an establishment to be used as a gathering place for a group of citizens organized for a non-profit purpose.

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**SETBACK** means the area of a LOT measured from the LOT LINE to a BUILDING facade or elevation that is maintained clear of permanent STRUCTURES, with the exception of allowed encroachments for stairs or porches.

**SHADOW FLICKER** means the visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

**SHOPFRONT** means a private FRONTAGE conventional for retail use, with substantial glazing and an awning, wherein the facade is aligned close to the front property line with the BUILDING entrance at SIDEWALK grade.

**SHOPPING CENTER** means any BUILDING containing five (5) or more tenants and containing more than fifty thousand (50,000) Square feet of gross FLOOR AREA.

**SIDEWALK** means the paved section of the public FRONTAGE dedicated to pedestrian activity, café seating, and other STREET FURNITURE.

**SIGN** means any name, identification, description, display, illustration which is affixed to or painted or represented directly or indirectly upon a BUILDING, STRUCTURE or piece of land, in view of the general public, and which directs attention to an object, product, place, activity, person, institution, organization or business.

**SIGN AREA** means the entire area within a single continuous perimeter enclosing the extreme limits of the actual SIGN surface. It does not include any structural elements outside the limits of such perimeter which do not form an integral part of the display. For projecting or double-faced SIGNS, only one (1) display space shall be measured in computing total surface area where the SIGN faces are parallel or where the interior angle formed by the faces is ninety degrees (90°) or less.\*

**SITE DEVELOPMENT PLAN** means professionally rendered drawings which delineate a proposed non-residential, multi-family or MANUFACTURED HOUSE development. Said plan shall include: property lines, location of BUILDINGS, means of ingress and egress, access to off-site parking and all provisions as outlined in this Chapter and Chapter 149, entitled Site Review, of the Code of the City of Dover.

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\* See Figures 8 and 9 of the SIGN Diagrams, Part II, included at the end of this chapter.

## ***ZONING***

**SLOPE** means the ratio of vertical distance to horizontal distance (rise divided by run), usually expressed in percent or degrees. SLOPE is measured over horizontal distances of twenty (20) feet or more, utilizing elevations at two-foot contours.

**SQUARE** means a CIVIC SPACE designed for unstructured recreation and civic purposes, spatially defined by BUILDING FRONTAGES and consisting of paths, lawns and trees.

**SMALL WIND ENERGY SYSTEM** means a wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

**STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS** means facilities that are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated EARTH materials.

**STOOP** means a private FRONTAGE wherein the facade is aligned close to the front property line with the first story elevated from the SIDEWALK for privacy, with an exterior stair and landing at the entrance.

**STREET** means a city thoroughfare for vehicle access.

**STREET FURNITURE** means benches and other STRUCTURES incorporated into the STREETSCAPE for use by pedestrians.

**STREET LIGHTS** means pedestrian scale lighting incorporated into the STREETSCAPE and in parking facilities to promote safe travel during evening hours.

**STREET TREES** means canopy trees used to reinforce the area along vehicular streets where pedestrian activities are encouraged.

**STREET WALLS** means a freestanding wall built along the front property line. It may mask a parking LOT from the STREET, provide privacy to a SIDE YARD, and/or strengthen the spatial definition of the public realm.

**STREETSCAPE** means the physical elements along a STREET including trees, benches, waste bins, and bike racks.

**STRUCTURE** means a framework of support.

## ***DOVER CODE***

**SUSPENSION** means the ordered cessation of that portion of an extraction operation that is in violation of this Article until such time as the owner or operator can demonstrate compliance to the Zoning Administrator.

**SYSTEM HEIGHT** means the vertical distance from ground level to the tip of the WIND GENERATOR blade when it is at its highest point.

**TELECOMMUNICATIONS FACILITIES** means any STRUCTURE, ANTENNA, TOWER, or other device which provides licensed commercial mobile wireless services, cellular telephone services, specialized mobile radio communications (SMR), enhanced specialized mobile radio communications (ESMR), personal communications service (PCS), paging, and similar services marketed to the general public.

**TEMPORARY PORTABLE SIGN** means a SIGN(s) customarily located on a trailer or similar wheeled apparatus, whether self-propelled or pulled by another vehicle, intended for promotional purposes or to convey an advertising message of any kind, which is not permanently affixed to the ground. A-frame, sandwich board, inflatable, and other SIGNS not permanently affixed, directly or indirectly, upon a BUILDING, STRUCTURE or land and not otherwise referenced under the definitions of "FREESTANDING SIGN," "PROJECTING SIGN" or "WALL SIGN", shall also be considered as "TEMPORARY PORTABLE SIGNS".

**TERRACE/LIGHTWELL** means a private FRONTAGE set back from the front property line by an elevated terrace or sunken lightwell which is permitted to encroach beyond the BUILD TO LINES.

**TOURIST HOME** - [Repealed on 08-01-90 by Ord. No. 8-90.]

**TOWER** means any STRUCTURE that is designed and constructed primarily for the purpose of supporting one or more ANTENNAS, including self-supporting lattice towers, guy towers, or monopole towers. The terms also includes commercial radio and television transmission towers, microwave towers, common carriers towers, cellular telephone towers, ALTERNATIVE TOWER STRUCTURES, and similar STRUCTURES.

**TOWER** means the monopole, guyed monopole or lattice structure that supports a WIND GENERATOR.

**TOWER HEIGHT** means the height above grade of the fixed portion of the TOWER, excluding the WIND GENERATOR.

## ***ZONING***

**TRANSFER OF DEVELOPMENT RIGHTS (TDR)** means the conveyance of the DEVELOPMENT RIGHTS of a parcel of land by deed or other legal instrument approved by the PLANNING BOARD to the developer of another parcel. Said legal instrument shall be recorded at the Strafford County Registry of Deeds.

**TDR DISTRICT** means an area defined as a zoning overlay district, which includes a SENDING AREA and a RECEIVING AREA for the purpose of transferring DEVELOPMENT RIGHTS from a parcel within the SENDING AREA to a parcel within the RECEIVING AREA.

**USED CAR LOT** means an unenclosed space on which three (3) or more used cars are stored or offered for sale.

**VEHICLE REFUELING /RECHARGING STATION** means an establishment, the principle use of which is to provide for the sale of gasoline fuel (including but not limited to gasoline, diesel, natural gas, electricity or hydrogen) and oil to individual vehicles and retail sale of products required for motor vehicle maintenance such as oil, transmission fluid, brake fluid, polish, wax, fuel additives and treatments, wipers, tires, batteries, windshield wiper fluid, cleaning fluids and similar items. The retail sale of propane and kerosene is also allowed. The retail sale of over-the-counter retail consumer merchandise and DRIVE-THRU SERVICE may also be allowed.

**WALL SIGN** means a SIGN attached to or erected against the wall of a BUILDING, with the face in a parallel plane to the plane of the BUILDING wall, and projecting no more than fourteen (14) inches from the BUILDING wall.<sup>†</sup>

**WAREHOUSING** means only includes the activity of storing wares or goods by the occupant in his own behalf or for the benefit of others.

**WATER DEPENDENT** means those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore, cannot be located inland.

**WATER RELATED EDUCATIONAL/RESOURCE CENTER** means a facility devoted to the provision of educational resources and materials and/or displays. Such a facility may include but not be limited to a museum, aquarium, and aquaculture facility.

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<sup>†</sup> See Figure 10 of the SIGN Diagrams, Part II, included at the end of this chapter.

## ***DOVER CODE***

**WATERBORNE PASSENGER TRANSPORTATION FACILITY** means a facility designed for storing, servicing, fueling, berthing, securing and launching of excursion boats and water shuttles for the purpose of transporting passengers.

**WETLAND EVALUATION HANDBOOK FOR DOVER** means the manual used to conduct a functional evaluation of the wetland in order to obtain a conditional use permit as required by the Wetland Protection District Ordinance.<sup>‡</sup> This handbook shall be adopted and amended, as required, by the PLANNING BOARD after a public hearing. Notice for said public hearing shall be published in a newspaper of general circulation and posted in three (3) places at least fifteen (15) days prior to the hearing.

**WHOLESALE** means only includes the activity of storage, repacking, sale and/or distribution of commodities in BULK quantities to jobbers, retailers, processors and manufacturers and shall not allow the sale and/or distribution of commodities to consumers on a retail basis.

**WIND GENERATOR** means the blades and associated mechanical and electrical conversion components mounted on top of the TOWER whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

**YARD, FRONT** means an open unoccupied space on a LOT between the STREET line and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

**YARD, REAR** means an open unoccupied space on a LOT between the REAR LOT LINE and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

**YARD, SIDE** means an open unoccupied space on a LOT between the side LOT LINE and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

**ZONING BOARD OF ADJUSTMENT** means the ZONING BOARD OF ADJUSTMENT of the City of Dover, as provided in the RSA 673:3

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<sup>‡</sup> See 170-27.1, Wetland Protection District, of this Chapter.

# ***ZONING***

## **ARTICLE III**

### **DISTRICTS AND DISTRICT BOUNDARIES**

**170-7. Establishment of Districts.** [Amended on 3-30-83 by Ord. No. 5-83; Amended on 4-27-83 by Ord. No. 12-83; Amended on 10-26-88 by Ord. No. 18-88; Amended on 04-03-91 by Ord. No. 01-91; Amended on 09-16-92 by Ord. No. 23-92; Amended on 11-22-95 by Ord. No. 19-95; Amended on 10-18-2006 by Ord. 03-2006; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 10-10.27-13; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

#### **A. Districts:**

The City of Dover is hereby divided into the following districts:

##### **Residential**

R-40	Rural Residential District
R-20	Low-Density Residential District
R-12	Medium-Density Residential District
RM-SU	Suburban Density Multi-residential District
RM-U	Urban Density Multi-residential District

##### **Nonresidential**

B-1	NEIGHBORHOOD Business District
B-3	Thoroughfare Business District
B-4	HOTEL/Retail District
B-5	Gateway District
I-1	Restricted Industrial District
I-2	Rural Restricted Industrial District
I-4	Assembly and Office
ETP	Executive and Technology Park

##### **Mixed -Use**

H	Hospital
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LBW	Little Bay Waterfront District
O	Office District
CBD	Central Business District
CWD	Cochecho Waterfront District
Overriding	
CD	Conservation District
URD	Urban Renewal District
RRD	Riverfront Residential Overlay District
GWP	Groundwater Protection District
HWD	Hazardous Waste Landfill District
RCM	Residential-Commercial Mixed Use
SRD	Scenic Road Overlay District
TDR	TRANSFER OF DEVELOPMENT RIGHTS
TEL	Telecommunications Facilities
WPD	Wetland Protection District"

### **B. District Purpose Statements:**

#### **(1) RESIDENTIAL DISTRICTS**

The residential districts are intended to provide a wide range of residential units to provide the citizens of Dover with a balance of housing choices, with varying housing types, densities and costs. The goal is to preserve and create city NEIGHBORHOODS that are safe and promote harmonious development.

##### **(a) Rural Residential District (R-40)**

The purpose of this residential district is to provide for conventional single-family NEIGHBORHOODS in the more rural areas of the city. These areas have larger LOT sizes (1+ acres) and the homes are most likely served by on-

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site septic systems and wells, but there are some portions of the district that have municipal sewer and water. New subdivisions are designed as OPEN SPACE developments with reduced LOT sizes allowed in return for the permanent preservation of OPEN SPACE. Agriculture and farming are promoted in this district. Some non-residential uses that are compatible with single-family homes are permitted, including churches, hospitals, elementary schools, high schools and CHILD CARE FACILITIES.

### **(b) Low-Density Residential District (R-20)**

The purpose of this residential district is to provide for conventional single-family NEIGHBORHOODS on LOTS not less than twenty thousand (20,000) square feet. The homes in this district are likely served by municipal sewer and water, but there are some areas that still have on-site septic systems and wells. These districts are located near major roadways. The development of parcels with at least fifteen (15) acres can be done as OPEN SPACE subdivisions. Agriculture and farming are promoted in this district. Some non-residential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools and CHILD CARE FACILITIES.

### **(c) Medium-Density Residential District (R-12)**

The purpose of this residential district is to provide for conventional single-family NEIGHBORHOODS on LOTS not less than twelve thousand (12,000) square feet. The homes in this district are almost all served by municipal sewer and water. Many of the NEIGHBORHOODS surrounding the elementary schools are in this district and have a SIDEWALK system that is conducive to children walking to school. The development of parcels with at least five acres can be done as OPEN SPACE subdivisions. Some non-residential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools, colleges and CHILD CARE FACILITIES.

### **(d) Suburban Density Multi-residential District (RM-SU)**

The purpose of this residential district is to provide an environment suitable for a variety of moderate density housing types, including SINGLE-FAMILY, two family, 3-4 family and MULTI-FAMILY DWELLINGS. These districts are suburban NEIGHBORHOODS located along major roadways outside of the center of the city. The homes in this district are almost all served by municipal sewer and water. Some non-residential uses that are compatible

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with residences are permitted, including churches, elementary schools, high schools, and CHILD CARE FACILITIES.

### **(e) Urban Density Multi-residential District (RM-U)**

The purpose of this residential district is to provide an environment suitable for a variety of moderate/high density housing types, including SINGLE-FAMILY, two family, and 3-4 family dwellings. These districts are urban NEIGHBORHOODS located close to the downtown area and contain many historic homes that are built close to the SIDEWALKS and STREETS. The homes in this district are all served by municipal sewer and water. Some non-residential uses that are compatible with residences are permitted, including churches, funeral parlors, elementary schools, high schools, and CHILD CARE FACILITIES.

## **(2) NONRESIDENTIAL DISTRICTS**

The nonresidential districts are intended to provide suitable areas for commercial, service, retail, office and industrial developments, to provide employment opportunities for citizens of Dover and the region, to enhance property values, and expand the tax base. Development that uses land efficiently and has high quality design is encouraged.

### **(a) NEIGHBORHOOD Business District (B-1)**

The purpose of this business district is to provide small sites for commercial use in or near dense residential NEIGHBORHOODS without having significant impact upon residential uses. The district encourages traditional small scale retail and service uses that are convenient for the nearby residents. Development is intended to be pedestrian-oriented and compatible with the scale of the residential uses.

### **(b) Thoroughfare Business District (B-3)**

The purpose of this business district is to provide an environment that encourages efficient and attractive automobile oriented commercial development along major highways outside of the downtown. The twenty thousand (20,000) square foot minimum LOT size encourages moderately sized commercial uses. The district provides economic development opportunities for a mix of land uses, including retail sales, personal services, restaurants, automobile sales, HOTELS, offices, banks, and theaters. Other commercial uses and MULTI-FAMILY DWELLINGS are allowed by special exception.

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### **(c) HOTEL/Retail District (B-4)**

The purpose of this business district is to provide an environment that encourages efficient and attractive commercial development on a larger scale along major highways outside of the downtown. The minimum LOT size of five acres encourages larger commercial development. The district provides economic development opportunities for a mix of land uses, including retail sales, personal services, restaurants, HOTELS, offices, banks, and theaters.

### **(d) Gateway District (B-5)**

The purpose of this business district is to provide an environment that encourages efficient and attractive commercial development along major highways that are gateways to the city. The minimum LOT size of twenty thousand (20,000) square feet encourages a mix of various sized commercial uses. The district provides economic development opportunities for a mix of land uses, including retail sales, personal services, restaurants, VEHICLE REFUELING/RECHARGING STATION, automobile sales, HOTELS, offices, banks, and theaters.

### **(e) Restricted Industrial District (I-1)**

The purpose of this industrial district is to provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, storage, warehousing, wholesaling and shipping activities that expand the economic base of the city and provide employment opportunities. These areas tend to be smaller sites closer to the downtown area containing older buildings that have historically been used for industrial and business uses. The smaller minimum LOT size of forty thousand (40,000) square feet also encourages business uses such as PUBLISHING, HOTELS, VEHICLE REFUELING/RECHARGING STATION, car sales, offices, and personal services. The close proximity of these areas to older residential NEIGHBORHOODS requires careful consideration of impacts on adjacent uses in other districts.

In 2009 the zoning for this district was amended to allow for the redevelopment of this industrial property in a more flexible and context sensitive method. The district encourages mixed residential and commercial uses that complement one another and create a sense of community between the mixed uses.

### **(f) Rural Restricted Industrial District (I-2)**

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The purpose of this industrial district is to provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, storage, WAREHOUSING, WHOLESALING and shipping activities that expand the economic base of the city and provide employment opportunities. This area is the location of one of the first industrial parks in the city, located off Littleworth Road and Knox Marsh Road in a more rural area. The smaller minimum LOT size of twenty thousand (20,000) square feet also encourages business uses such as PUBLISHING, HOTELS, VEHICLE REFUELING/RECHARGING STATION, restaurants, car sales, offices, and personal services.

### **(g) Assembly and Office (I-4)**

The purpose of this industrial district is to provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, laboratory, testing facility, WAREHOUSING, WHOLESALING, PUBLISHING and shipping activities that expand the economic base of the city and provide employment opportunities. These areas are located along major collector roads away from the downtown area. The newest industrial park developed by the city is located in this district. The minimum LOT size in this district is five acres, which encourages larger industrial users.

### **(h) Executive and Technology Park (ETP)**

The purpose of this executive and technology district is to provide appropriate locations for large-scale high technology, research, professional office, and clean manufacturing uses that need large sites and high aesthetic standards. The general character of the district is intended to be a campus or park-like setting that encourages creative design and innovation in site planning and development, while protecting the natural resources. In this district the minimum LOT size is three acres and there is no FRONTAGE requirement, which encourages larger users in campus settings. Some of the city's largest employers are located in this district. This district includes special design standards for BUILDINGS, parking LOTS and landscaping.

## **(3) MIXED –USE DISTRICTS**

The mixed use districts are intended to provide suitable areas for a mixture of urban NEIGHBORHOODS containing residential, commercial, service, retail, and office uses. The mixed use development is intended to create a sense of community between the mixed uses and facilitate the economical and efficient use of land. The districts are intended to provide housing and employment opportunities for citizens of Dover and the region, to enhance property values, and

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expand the tax base. Development that uses land efficiently and has high quality design is encouraged.

### **(a) Office District (O)**

The purpose of this office district is to provide appropriate locations for a mixture of residential and offices uses along higher volume STREETS. The remaining large historic homes are no longer suitable for single family residential due to the high traffic. This district is a transition area between the more commercial areas and the urban residential areas on the side streets. Residential uses up to four dwelling units per structure are permitted, along with commercial uses such as offices, banks, funeral parlors, churches, schools, hospitals, NURSING HOMES and CONGREGATE CARE FACILITIES. The density for residential uses is about eight units per acre and in new buildings residential is only allowed on the second floor or higher.

### **(b) Central Business District (CBD)**

The purpose of this district is to provide the appropriate locations for context sensitive zoning. The form based code in this district is intended to foster a vital main street both for itself and for its adjacent NEIGHBORHOODS through a lively mix of uses—with shop fronts, SIDEWALK cafes, and other commercial uses at street level, overlooked by canopy shade trees, upper story residences and offices. The district has an increased emphasis on the form and placement of structures and a decreased emphasis on the function(s) contained within them.

### **(c) Cochecho Waterfront District (CWD)**

The purpose of this mixed use district is to provide appropriate locations for a mixture of residential and commercial uses on the waterfront parcels along the downtown portion of the Cochecho River. This district has very flexible dimensional requirements, with no minimum LOT size, FRONTAGE or SETBACK requirements and a density of forty three (43) dwelling units per acre. Several water related land uses are permitted in the district, including MARINAS, WATERBORNE PASSENGER TRANSPORTATION FACILITIES and WATER RELATED EDUCATION AND RESOURCE CENTERS. The architecture of the waterfront areas should encourage the development of marine, history or tourism related land uses and activities, which take advantage of the unique characteristics of the waterfront as well as its central location and proximity to historic areas.

### **(d) Hospital (H)**

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The purpose of the hospital district is to provide appropriate locations for hospitals and medical offices associated with a hospital. This district also encourages other health care services and various housing facilities providing levels of service for older persons. Single and two family residential uses are permitted along with commercial uses such as offices, banks, funeral parlors, assembly halls, and schools.

### **(e) Little Bay Waterfront (LBW)**

The purpose of this mixed use district is to provide locations for a mixture of residential and commercial uses on the waterfront parcels along a portion of the shores of the Little Bay. The small minimum lot size encourages a mix of various sized commercial uses, with water related uses, such as marinas, specifically permitted. Single and two family homes are allowed in recognition of the historically residential use of the area. Three or four family dwellings are allowed only as part of a mixed use building. Businesses that take advantage of the unique location along Little Bay are encouraged.

### **(4) OVERRIDING DISTRICTS**

The purpose of the overriding districts is to provide an additional layer of land use regulation or protection is certain sensitive areas of the city. The requirements of these overlay districts are in addition to the underlying zoning districts. Most of the districts are intended to protect environmentally sensitive areas. For specific purpose statements review the text of each overriding district.

## **170-8. Zoning Map. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]**

- A. The location and boundaries of the Zoning Districts are hereby established as shown on a map entitled "Zoning Map of the City of Dover, New Hampshire"<sup>§</sup>, dated December 9, 2009, which accompanies and is hereby declared to be part of this chapter.
- B. For the purposes of the delineation of the Central Business District (CBD) the location and boundaries of sub districts are hereby established as shown on a map entitled "REGULATING PLAN<sup>\*\*</sup> for the CBD Zone" dated December 9, 2009, accompanies and is hereby declared to be part of this chapter."

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<sup>§</sup> Said Zoning Map is on file in the office of the Planning Department, where it may be examined during regular business hours.

<sup>\*\*</sup> Editor's Note: Said REGULATING PLAN is on file in the office of the Planning Department, where it may be examined during regular business hours.

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### **170-9. Amendments to Zoning Map.**

Any change in the location of boundaries of a zoning district hereafter made through the amendment of this chapter shall be noted on the Zoning Map.

### **170-10. Interpretation of District Boundaries.**

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries indicated as a STREET, railroad, watercourse or other body of water shall be construed to be the center or middle thereof.
- B. Boundaries indicated as following approximately or parallel to a STREET, railroad, watercourse or other body of water, it shall be construed to be parallel thereto and at such distance there from as shown on the Zoning Map.
- C. Where a dimensioned boundary coincides within ten (10) feet or less with a LOT LINE, the boundary shall be construed to be the LOT LINE.
- D. Where a boundary is indicated as intersecting the centerline of a STREET, railroad, watercourse or other body of water, it shall be construed to intersect at right angles to said center line or, in the case of a curved center line, at right angles to the tangent of the curve at the point of intersection.
- E. Where a district boundary divides one (1) LOT and more than fifty percent (50%) of the area of such LOT lies in the less restricted district, the regulations prescribed by this chapter for the less restricted district may apply to the remainder of said LOT up to a distance of not more than fifty (50) feet from the district boundary. In no case, however, shall such extension of the less restricted district be permitted closer than one hundred (100) feet to any STREET line in the more restricted district.

## **ARTICLE IV**

### **USES; TABLES**

#### **170-11. Use Regulations.** [Amended on 08-01-90 by Ord. No. 8-90; Amended on 12-09-2009 by Ord. No. 8-90.]

Except as herein provided, no BUILDING or land shall be used except for the purposes permitted in the district as described in this Article.



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- A. Uses permitted by right. A use listed in the Tables of Use and Dimensional Regulations By District is permitted as a matter of right in the district in which it is listed, subject to the rules set forth in this Chapter and other sections of the Code of the City of Dover.
- B. Uses permitted by right, with conditions imposed. A use listed in the Tables of Use and Dimensional Regulations By District and denoted with a numerical reference number (footnote) indicates a use that is permitted by right only when in compliance with certain imposed conditions.

Uses permitted by special exception. A use listed in the Uses Via Special Exception section of the Tables of Use and Dimensional Regulations By District may be permitted as a special exception granted by the PLANNING BOARD of Adjustment in accordance with the conditions of Article VI and 170-52 herein and in conformance with such other rules and regulations as may apply.

The Special Exception designation in a given district does not constitute an authorization of an assurance that such use will be permitted.

- C. Uses not permitted. A use not listed in the Tables of Use and Dimensional Regulations By District shall not be permitted in the district.
- D. PLANNING BOARD Site Review Approval. The following development/redevelopment shall be subject to the rules and regulations contained in the Site Review Regulations of the City of Dover<sup>††</sup>:
  - (1) All non-residential development or redevelopment.
  - (2) All multi-family residential uses wherein more than five (5) units are proposed for development.
  - (3) All MANUFACTURED HOUSING PARKS.
  - (4) Any Change of Use as defined in Chapter 149, Site Review Regulations.
- E. Overriding district regulations. All uses are subject to the regulations of the overriding districts as listed and defined in this Chapter. (Refer to Article VII.)

### **170-12. Applicability of Tables of Use and Dimensional Regulations by District. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]<sup>‡‡</sup>**

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<sup>††</sup> See Ch. 149, Site Review.

<sup>‡‡</sup> See district sheets for individual amendment dates.

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- A. Uses permitted in those zoning districts identified in 170-7 shall be as set forth in the Tables of Use and Dimensional Regulations By District.
- B. The minimum regulations for LOT size, LOT FRONTAGE, BUILDING SETBACK standards for front, side and REAR YARDS, BUILDING HEIGHTS, and LOT coverage shall be as specified in the Tables of Use and Dimensional Regulations By District.

## **ARTICLE V**

### **DIMENSIONAL REGULATIONS**

#### **170-13. Availability of Utilities and Services.** [Amended on 6- 10-87 by Ord. No. 13-87.]

In instances where municipal sewer and water facilities are not provided, no residential STRUCTURE shall be built on a LOT with less than thirty thousand (30,000) square feet in area. Where municipal water is available and sewer is not, the minimum LOT size shall be twenty thousand (20,000) square feet in area. In no instance, however, shall the above requirements be more permissive than those required by the New Hampshire Water Supply and Pollution Control Commission or required elsewhere in this chapter. Furthermore, the above requirement shall not be substituted for mandatory hookups required by other Chapters of the Code of the City of Dover.

#### **170-14. Nonconforming LOTS.** [Amended on 6-10-87 by Ord. No. 13-87; Amended on 08-01-90 by Ord. No. 8-90.]

The erection of a BUILDING or STRUCTURE shall be permitted on any LOT which has been duly recorded at the Strafford County Registry of Deeds on or before the effective date of adoption of this Chapter, provided that:

- A. The LOT shall support a land area of at least five thousand (5,000) square feet and a minimum width of fifty (50) feet. In such cases, the following SIDE YARD restrictions shall apply:
  - (1) A LOT with a width of one hundred ten (110) feet or less and greater than seventy-five (75) feet, shall have a minimum SIDE YARD of ten (10) feet.
  - (2) A LOT with a width of seventy-five (75) feet or less and fifty (50) feet or more shall have a minimum SIDE YARD of six (6) feet.
- B. Refer to Article X of this chapter for provisions regulating nonconforming LOTS that are adjacent or of continuous FRONTAGE and NONCONFORMING USES and STRUCTURES.

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### **170-15. OPEN SPACE Requirements.** [Amended on 08-01-90 by Ord. No. 8-90, Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

- A. For each bedroom of a multifamily [greater than four (4) DWELLING UNITS] residential STRUCTURE, there shall be provided at least one hundred (100) square feet of usable OPEN SPACE. Half of this required OPEN SPACE shall be provided in such a manner so as to afford active recreational opportunities for children, to include such facilities as swings, sandboxes, slides, play areas, etc. The remainder of the required OPEN SPACE shall be provided in such a manner so as to afford passive recreational opportunities for adults, such as sitting areas, outdoor cooking facilities, walkways, etc. The active and passive recreational facilities may be combined or separated as appropriate to the site and to the anticipated occupancy needs of the development. Efficiency apartments shall be counted on the basis of fifty (50) square feet per unit. Projects which are designed not to contain children (i.e., housing for the elderly) may eliminate the active recreational component of this requirement.
- B. The minimum distance between any main BUILDING and any accessory BUILDING not structurally attached to such main BUILDING shall be not less than the HEIGHT of the rear wall of the accessory BUILDING.
- C. No part of a yard or other OPEN SPACE required about any BUILDING for the purpose of complying with the provisions of this chapter shall be included as part of a yard or other OPEN SPACE similarly required for another BUILDING.
- D. All OPEN SPACE requirements pursuant to this section shall not be binding in the CBD, and CWD Zoning Districts.

### **170-16. Dimensional Regulations for Swimming Pools.** [Amended 12-09-2009 by Ord. No. 2009.09.09-15.]

In Districts allowing one (1) Family Dwellings, two (2) Family Dwellings, and three to four (3 – 4) Family Dwellings, pools for swimming or bathing shall be in conformity with the following regulations:

- A. Every outdoor swimming pool shall be completely surrounded by a FENCE or wall not less than four (4) feet in height, which shall be so constructed as not to have openings, holes or gaps larger than four (4) inches in any dimension, except for doors and gates, and if a FENCE is erected or maintained, the horizontal dimension shall not exceed four (4) inches. A primary dwelling or accessory BUILDING or STRUCTURE may be used as part of the enclosure.
- B. Gates. All gates or door openings through such enclosure shall be equipped with a self-closing and self-latching device for keeping the gates or door securely closed at

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all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.

- C. **Applicability.** The requirements of this chapter shall be applicable to all new swimming pools hereafter constructed, other than indoor pools, and shall apply to all existing pools which have a minimum depth of eighteen (18) inches of water. No person in possession of land within the city, either as owner, purchaser, lessee, tenant or a licensee, upon which is situated a swimming pool having a minimum depth of (18) inches shall fail to provide and maintain such FENCE or wall as herein provided.
- D. **Appeals and hearings.** The Board of Adjustment after public hearing, may make modifications in individual cases, upon a showing of good cause with respect to the height, nature or location of the FENCE, wall, gates or latches or the necessity therefore, provided that the protection as sought hereunder is not reduced thereby. The Board of Adjustment may permit other protective devices or STRUCTURES to be used so long as the degree of protection afforded by the substitute devices or STRUCTURES is not less than the protection afforded by the wall, FENCE, gate and latch described herein.
- E. **State requirements.** Swimming pools shall conform to all requirements of the New Hampshire Department of Health and Welfare.
- F. **Option to FENCE regulation.** When not in attendance, access ladders or slide ladders to pool shall be removed or raised and locked or otherwise made inaccessible from the outside to small children.

### **170-17. Dimensional Regulations for Handicapped Accessible Additions.**

[Amended on 08-14-93 by Ord. No. 17-93; Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

Upon the discretion of the Building Inspector, with consultation of the Zoning Administrator, in all zoning districts a STRUCTURE constructed for the express purpose of improving and/or providing accessibility to an existing BUILDING for physical and/or mentally challenged individuals may be erected within the BUILDING SETBACKS (front, side and/or REAR) as specified in the Table of Dimension Regulations provided:

- A. The STRUCTURE cannot feasibly and practicably be constructed on the LOT in compliance with the Table of Dimensional Regulations;
- B. ABUTTERS to the property on which the proposed STRUCTURE will be erected shall be notified by the Building Inspector prior to the issuance of the building permit; and
- C. The STRUCTURE must not create a hazard or detrimental impact to surrounding properties.

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**ARTICLE VI**

**ADDITIONAL REGULATIONS**

**170-18. CUSTOMARY HOME OCCUPATIONS.** [Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

A CUSTOMARY HOME OCCUPATION is a permitted use in all Residential Districts. The following conditions apply:

- A. "Home occupation" shall include not more than one (1) of the following uses, provided that such uses are clearly incidental and secondary residential purposes; dressmaker, artist, arts and crafts, writer, teacher, provided that not more than eight (8) pupils simultaneously occupy the BUILDING, musician, antique dealer, hairdresser, HOME BASED AGRICULTURAL ACTIVITIES, lawyer, doctor, photographer, dentist, architect, engineer or practitioner of any other profession or similar occupation which may be unobtrusively pursued in a residential area.
- B. No more than one (1) nonresident shall be employed therein.
- C. The use is carried on strictly by the occupant of the PRINCIPAL BUILDING.
- D. No more than twenty-five percent (25%) of the existing net FLOOR AREA\of the principal and any accessory BUILDINGS not to exceed six hundred (600) square feet is devoted to such use.
- E. There shall be no display of goods or wares visible from the STREET.
- F. No advertising on the premises other than a small no-illuminated SIGN not to exceed two (2) square feet in area and carrying only the occupant's name and his occupation.
- G. The BUILDINGS or premises occupied shall not be rendered objectionable or detrimental to the residential character of the NEIGHBORHOOD because of the exterior appearance, traffic emission of odor, gas, smoke, dust, noise, electrical disturbance, light emissions, or in any other way. In a MULTIFAMILY DWELLING, the use shall in no way become objectionable or detrimental to any residential use within the multifamily STRUCTURE.
- H. Any such BUILDING shall include no feature of design not customary in BUILDINGS for residential use. The following uses, by nature of the investment or operation, have a potential to rapidly increase beyond the limits specified above for home occupations and impair the use, value and quiet enjoyment of adjacent residential properties. Therefore, uses such as Retail, Clinic, Landscaping, Freight, Trucking or Shipping, Painting of Vehicles, Trailers and Boats, Restaurants, Caterers

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or Bakeries, Taxi Service, Tool or Equipment Rental, Veterinary hospital or KENNEL and others of a similar nature shall not be considered as home occupations.

- I. A minimum of two (2) OFF-STREET PARKING SPACES shall be provided. All driveways to be used in connection with such occupations shall conform to Chapter 92. Driveways
- J. Not more than one (1) commercial vehicle in connection with such home occupation shall be stored on the premises.
- K. A certificate of use for the proposed home occupation is issued by the Zoning Administrator verifying conformance with the preceding standards. Said certificate shall be renewed annually. Applications to renew the certificate of use shall be due by January 1st following the date of approval of the certificate of use and then by every January 1st thereafter for so long as the customary home occupation continues. Fees shall be levied as set forth in the City of Dover Adopted Schedule of Fees, as amended annually, for CUSTOMARY HOME OCCUPATION certificates of use and renewals.
- L. The use of a room in a dwelling or accessory building as a home office by a resident/occupant is a permitted use and does not require a certificate of use, provided that the use does not generate any traffic such as (i) deliveries or pickup of supplies or materials in excess of normal residential use, or (ii) clients coming to the property.

### **170-19. Flexible Uses in the I-1 District.** [Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

#### **A. Purpose and Intent**

The Restricted Industrial District was created in 1949 as a zone around property that had industrial uses on it prior to the inception of Zoning in Dover. These areas of the City are surrounded by residential uses and are located in the urban core of the City. The properties have continued to be utilized in an industrial capacity, however this use may not be compliant with the surrounding uses, and a more context sensitive reuse may be more appropriate.

The purpose of this section is to allow property owners to redevelop their industrial property in a more flexible and context sensitive method. Additionally, these non-residential nodes are located in areas that could accept commercial uses that are on a neighborhood scale and the property could offer surrounding residents opportunities that do not exist today.

The district includes options which enable and encourage greater flexibility in the design of residential housing with commercial projects that adaptively reuse the

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industrial property in a more context sensitive mode. The district encourages mixed residential and commercial uses are intended to be complementary of one another and to create a sense of community between the mixed uses.

### **B. Permitted Uses**

The following uses are permitted:

#### **(1) Principal Uses**

- (a) Two-family dwelling
- (b) Three to Four family dwelling
- (c) MULTI-FAMILY DWELLING (if part of a STRUCTURE that includes non-residential uses, must be on the second floor or above)
- (d) Public and private utilities
- (e) Non-Residential uses as allowed as follows:
  - (i) Barber or Beauty Shop
  - (ii) Bank
  - (iii) Eating/Drinking Establishments (no Drive thru Service)
  - (iv) BED AND BREAKFAST
  - (v) Office (excluding medical, dental or veterinary)
  - (vi) PERSONAL SERVICE ESTABLISHMENT
  - (vii) Retail store
  - (viii) Theater

#### **(2) ACCESSORY USES**

- (a) ACCESSORY USES typically associated with the above principal uses shall be allowed with the approval of the PLANNING BOARD at the time of site plan review.

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### **(3) Conditional uses**

The uses listed in this section shall be considered conditional uses, subject to approval by the PLANNING BOARD per the provisions of RSA 674:21, "Innovative Land Use Controls." In order for the conditional uses to be permitted, the PLANNING BOARD must determine that the proposed use complies with the statement of purpose of this section and meets all of the provisions of the district.

- (a) Medical, dental and veterinary offices.
- (b) COMMERCIAL RECREATION, including but not limited to health club, fitness center and recreation facilities, limited to no more than three (3) coin-operated amusement devices.
- (c) Funeral homes
- (d) Greenhouses
- (e) Existing industrial uses allowed at the time the ordinance is approved.

### **C. Procedural Concepts**

The developer shall prepare a Development Plan, which locates the proposed types of non-residential and residential development, utilities, access roads, and public ways. The parcels comprising the development may be under separate ownership, but shall be treated as one development and shall be bound by the approval granted for the entire Development Plan. If approval is granted, individual LOTS must be developed as part of the larger Development Plan and phasing outlined below, and not separately. The Development Plan must identify the percentage of the non-residential uses, residential uses and open space. Non-residential uses must exceed forty-nine percent (49%) of the original tract(s). Existing uses may contribute to the overall percentages.

Residential uses require that the calculation of permitted density shall be completed through the submission of a yield plan (as defined in Chapter 155-60) applied to the Development Lot and not individually to the Internal Dwelling LOTS.

For residential development of two (2) family, three to four (3 to 4) family and multi-family dwellings, that are to be constructed in new STRUCTURES, density shall be based upon calculating the average density of all residential LOTS located in the City of Dover within 600 feet of the external LOT LINE of the property. For multi-family dwellings that are to be constructed within or added onto existing STRUCTURES the density shall be based upon calculating one unit per four thousand (4,000) square feet of existing building space.



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The Development Plan may be phased for a term of five (5) years. The phasing plan shall contain provisions which promote the mixed use of the site consistent with Section 170-19 A. For the purposes of this section, development shall include:

- (1) construction of STRUCTURES;
- (2) environmental remediation;
- (3) site preparation or demolition;
- (4) roadway utility or recreation and common area design and construction; and bonding or other security for site development.

The phasing plan shall provide that no more than fifty percent (50%) of the residential development may be occupied prior to completion of between twenty-five percent (25%) and fifty percent (50%) of the non-residential STRUCTURES as negotiated between the Planning Board and the Developer.

Provided that the developer is making reasonable efforts to develop the site, the Planning Board may extend the initial five (5) year phasing period provided a request for extension is submitted before the expiration of the initial five (5) year phasing term.

### **(1) Residential Development Plan Guidelines**

The developer shall be permitted to allocate permitted density among Internal Dwelling LOTS in a flexible and creative manner. Dwellings shall be sited with a variety of setbacks to prevent the row house effect. The sum total of the permitted density shall not exceed the permitted density of the Development LOT or Legal LOT. Layouts may include individual LOTS or a cluster of units without LOT LINES.

Dwelling layouts shall be so designed that parking is screened from external roadways by garages, building locations, grading or screening. Major topographical changes or removal of existing trees shall be avoided wherever possible, and water, wetlands, and other scenic views from the external streets shall be preserved as much as possible.

Residential layout shall reflect surrounding neighborhood design and should embrace traditional neighborhood features and philosophies. These include, but are not limited to tree lined streets, architectural details that encourage the feeling that the development is an extension of existing neighborhoods and not built separately. In addition to tree lined streets, developments shall incorporate natural

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materials in the building construction such as brick, wood and a composite material, such as fiber cement siding, as approved by the PLANNING BOARD.

All residential development must adhere to architectural design guidelines. Development shall embrace the aesthetics of the existing neighborhood, within five hundred (500) feet of the external boundary line of the property. Embraced elements should include roof style, non-decorative porches, front stoops, and other architectural details. Chapter 149 -14.L, Site Review Regulations, may offer guidance in developing designs.

### **(2) Nonresidential Development Plan Guidelines**

The general character of the nonresidential STRUCTURES within the Development LOT is intended to be a pedestrian friendly setting, with emphasis on the natural characteristics of the site. The site design should create a sense of character and cohesiveness through landscaping, façade treatment, and SIGNAGE. Materials used for new construction should be natural materials such as brick, wood and a composite material, such as fiber cement siding, as approved by the PLANNING BOARD.

Care should be taken to allow for transitional uses between the existing neighboring uses and any proposed uses. All commercial and other enterprises shall be limited to the following hours of operation: 6:00 a.m. -- 12:00 a.m. The PLANNING BOARD may further restrict the hours of operation of individual businesses, based upon anticipated usage, at the time of site plan approval.

Non-residential uses proposed to be contained within new STRUCTURES shall be two or more stories and shall have residential units on the second floor or above to create a mixed use environment.

There may be only one (1) retail establishment selling general merchandise with a gross FLOOR AREA of up to ten thousand (10,000) square feet. All other establishments shall have no more than five thousand (5,000) square feet of gross FLOOR AREA, unless existing at the time of enacting of the ordinance.

The guidelines for this development are included in Chapter 149-14.2 ,Site Review Regulations,.

## **D. Standards and Regulations**

### **(1) Internal Roads**

As part of the approval of the site plan review, the PLANNING BOARD shall determine whether internal roads shall be public or private. If a road is determined

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to be private, no municipal services shall be provided other than public safety, utilities maintenance, and regulatory services. Unless noted below roadways shall conform to the STREET design criteria laid out in the City of Dover Code:

(a) Minimum Internal R.O.W.

(i) Maximum residential: 35 feet

(ii) Maximum Mixed use: 50 feet

(b) Minimum Pavement Width

(i) Minimum residential: 20 feet

(ii) Minimum non- residential: 28 feet

(iii) Minimum SIDEWALK pavement width: 5 feet

(iv) Minimum bike/Segway/golfcart path width: 5 feet

(c) Minimum Tangent Length at Intersections = 75 feet

(d) Maximum STREET angle at Intersections = 60 degrees

(e) Minimum centerline radius = 100 feet

(f) Minimum Tangent Length between reverse curves = 50 feet

(2) Dimensional Requirements

(a) SETBACKS

(i) Minimum SETBACKS from the edge of pavement and between STRUCTURES shall be calculated by determining the average SETBACK front, REAR and side SETBACKS of those STRUCTURES within five hundred (500) feet of the external property boundary.

(b) BUILDING HEIGHT

(i) To determine the residential BUILDING HEIGHT, the APPLICANT shall calculate the modal HEIGHT of all residential STRUCTURES, on the STREET side, within five hundred (500) feet of the external property boundary.

(ii) The highest modal HEIGHT shall be the maximum HEIGHT and the lowest modal HEIGHT shall be the minimum HEIGHT.

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(iii) For mixed use BUILDINGS, the HEIGHT shall be a maximum of forty-five (45) feet.

### **(3) Parking**

- (a) All DWELLING UNITS shall require two (2) independently accessible PARKING SPACES per unit, except where multimodal transportation resources are provided. Non-residential uses shall comply with parking requirements defined by the zoning ordinance.
- (b) Visitor parking shall be provided for each residential unit. The total residential spaces shall be calculated and an additional five percent (5%) of spaces shall be provided for visitors.
- (c) Where mixed uses will be contained within a STRUCTURE, parking shall be shared between the residential and non-residential uses.

### **170-20 Central Business District Regulations.** [Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 10-10.27-13.]

#### **A. Purpose and Intent**

The City of Dover Central Business District (CBD) follows the premises of context sensitive zoning. This form based code is intended to foster a vital main street both for itself and for its adjacent NEIGHBORHOODS through a lively mix of uses—with SHOPFRONTS, sidewalk cafes, and other commercial uses at street level, overlooked by canopy shade trees, upper story residences and offices.

Redevelopment within the Central Business District (CBD) shall be regulated by this form based code, in order to achieve the City's vision set forth in the 2007 update to the Land Use Chapter of the Master Plan, adopted by the PLANNING BOARD on November 13, 2007.

The form based code was developed through a citizen-based discussion process regarding the design for the improvement of all properties in the Central Business District. designated areas. To allow further refinement consistent with individual areas, the district has been divided into sub-districts, with special requirements for each sub-district to allow for context sensitive development along corridors and NEIGHBORHOODS alike.

All of the areas within the CBD share a common goal of increased emphasis on the form and placement of STRUCTURES, and a decreased emphasis on the function(s) contained within them. As such this Article sets careful and clear controls on BUILDING form—with broader parameters on BUILDING use—so as to shape clear, attractive PUBLIC

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SPACES (good streets, NEIGHBORHOODS and parks) with a healthy mix of uses. With proper urban form, a greater integration of BUILDING uses is natural and comfortable.

Wherever there appears to be a conflict between the form based code and other sections of the Zoning Ordinance (as applied to a particular development), the requirements specifically set forth in this section shall prevail. For development standards not covered herein, the other applicable sections in the City of Dover Code shall be used as the requirement.

### **B. Conditional Use Permit**

- (1) Conditional use approval for relief from the standards herein may be granted by the Planning Board (RSA 674:21 II) after proper public notice and public hearing provided that the proposed project complies with the following standards:
  - (a) That both public and private BUILDINGS and landscaping shall contribute to the physical definition of RIGHTS OF WAY as CIVIC SPACES.
  - (b) That development shall adequately accommodate automobiles, while respecting the pedestrian and the spatial form of public areas.
  - (c) That the design of streets and BUILDINGS shall reinforce safe environments, but not at the expense of accessibility.
  - (d) That architecture and landscape design shall grow from local climate, topography, history, and BUILDING practice.
  - (e) That BUILDINGS shall provide their inhabitants with a clear sense of geography and climate through energy efficient methods.
  - (f) That CIVIC BUILDINGS and public gathering places shall be provided as locations that reinforce community identity and activity.
  - (g) That CIVIC BUILDINGS shall be distinctive and appropriate to a role more important than the other BUILDINGS that constitute the fabric of the city.
  - (h) That the preservation and renewal of historic BUILDINGS shall be facilitated.
  - (i) That the harmonious and orderly evolution of urban areas shall be secured through the adoption of these regulations.
- (2) Conditional use approval shall be subject to a formal agreement between the PLANNING BOARD and the APPLICANT. Said agreement shall be recorded at the Strafford County Registry of Deeds.

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### **C. Sub-districts**

(1) The REGULATING PLAN for the CBD shall locate the boundaries for the following sub-districts:

- (a) General
- (b) Mixed Use
- (c) Residential

### **D. Standards and regulations**

(1) The standards for use and dimensions to be utilized within the CBD are shown on the tables at the end of the section. Included in each table are the following areas:

- (a) District Purpose
- (b) LOT Occupation Regulations
- (c) Diagram of BUILDING HEIGHT
- (d) Diagram of BUILD TO LINES
- (e) Special Regulations
- (f) Permitted Uses

(2) Where BUILDINGS exist on LOTS adjacent to a proposed BUILDING, the proposed BUILDING may match the more conforming of the adjacent BUILDINGS' SETBACKS and HEIGHTS rather than match the provisions of this code, through the issuance of a conditional use permit.

(3) The goal of the BUILDING HEIGHT and BUILD TO LINE standards is the creation of a healthy and vital public realm through good STREET space.

- (a) General Guiding Principles
  - (i) BUILDINGS are aligned and close to the STREET.
  - (ii) The STREET is a coherent space, with consistent BUILDING forms on both sides of the STREET, creating a clear PUBLIC SPACE and community identity.

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- (iii) BUILDINGS oversee the STREET (and SQUARE) with active fronts contributing to a vital and safe PUBLIC SPACE.
- (iv) Property lines are physically defined by BUILDINGS or STREET WALLS.
- (v) BUILDINGS are designed for an urban feel and situation. Views are directed to the STREET and the garden/courtyard, not toward the neighbors. However within the STREET wall alcoves or small courtyards are permitted to allow for seating and public access
- (vi) Vehicle storage, garbage and mechanical equipment are kept away from the STREET.
- (vii) Within the General and Mixed Use sub-districts, new retail and commercial activities are located on the GROUND FLOOR. Residential activity is not.
- (viii) Parking (not including on-street parking) should be away from the STREETS and shared by multiple owners/users.
- (ix) Historic character should be preserved and enhanced by context sensitive construction

### **E. STREETSCAPE**

- (1) The CBD sites shall be developed so that BUILDINGS are placed at or near the STREET, along the outer edge of their sites and so as to ensure the unity of those STREETS. Furthermore, the standards demonstrate the relationship between the STREET and LOTS. Finally, these standards establish an environment that encourages and facilitates pedestrian activity.
- (2) General Principles and Intent
  - (a) The STREETSCAPE
    - (i) The STREET and BUILDING façade receives more attention than the rest of the BUILDING.
    - (ii) STREETSCAPE elements, such as brick pavers, benches and waste-bins must be consistent within a project and adjacent properties.
    - (iii) PUBLIC ART is encouraged.
  - (b) FRONTS AND REARS

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- (i) BUILDING facades are the public "face" of every BUILDING. Owners are encouraged to place planters and window boxes with flowering plants and/or climbing vines along the area in front of their BUILDINGS.
- (ii) The private, REAR portions of the LOTS allow commercial operators to utilize these spaces as efficient working environments unseen by the public and allow residents to have private and semi-private (for apartment and condominium BUILDINGS) OPEN SPACE.

### **(c) OFF STREET PARKING**

- (i) Parking provided for a project shall be screened from the STREET.
- (ii) Parking shall be considered accessory and shall not be the principal use of a lot.

### **(3) Minimum Standards**

Unless sub-district tables indicate additional or replacement regulations, development shall follow the regulations outlined below:

#### **(a) The STREETSCAPE**

- (i) Each STREET shall have canopy shade trees (STREET TREES). STREET TREES shall be planted at an average spacing not greater than twenty-five (25) to thirty (30) feet on center (measured per BLOCK FACE). The planting area's minimum dimension shall be not less than five (5) feet. At planting, trees shall be at least four (4) to four and a half (4.5) inches in diameter (four (4) feet above grade) and at least twelve (12) feet in overall HEIGHT.
- (ii) Any unpaved ground area fronting the LOTS (to the curb) shall be planted with groundcover or flowering vegetation.

#### **(b) SIDEWALKS**

- (i) SIDEWALKS shall be a minimum of five (5) feet wide

#### **(c) STREET FURNITURE**

- (i) Benches - Benches will have backs and arm rests.



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a. For each project, one (1) bench will be provided for every one hundred (100) feet of FRONTAGE on a project.

(ii) Waste Bins - At a minimum, one (1) waste bin will be provided at each BLOCK CORNER.

(iii) Bike Racks – At a minimum, one (1) bike rack shall be required per non-residential project.

### **F. Architectural Standards**

The following standards are optional and may be utilized by the APPLICANT. An APPLICANT's election not to submit to architectural standards shall not adversely prejudice the application.

#### **(1) General Principles and Intent**

##### **(a) Tradition**

(i) These standards favor BUILDINGS that are traditional in design in a broad sense. They specify an architectural language of load-bearing walls and regional materials that help define building base and cornice. These standards encourage details, such as column and pier spacing, window proportions, entry level, roof or cornice configurations, storefronts, and overhangs.

(ii) The intent behind these standards is to reinforce the existing character and historic nature of Dover's central business district. However, modern BUILDINGS that are sensitive to that character may be permitted as well

(iii) All building materials to be used shall express their specific properties. For example, stronger and heavier materials (masonry) support lighter materials (wood).

##### **(b) Energy Efficiency and Environmental Conservation**

(i) LEED (Leadership in Energy and Environmental Design) standards, or an equivalent standard (or such others as may succeed them), are encouraged to be incorporated into the building design.

##### **(c) PUBLIC SPACE**

(i) Many of these standards apply only in conditions that enhance and define the PUBLIC SPACE. These controls concentrate on the public

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space/views from the public space and minimize interference in the private realm.

### **(2) Building Walls (Exterior)**

- (a) Building walls should reflect and complement the traditional materials and techniques of Dover's architecture. They should express the construction techniques and structural constraints of traditional, long-lasting, building materials. Simple configurations and solid craftsmanship are favored over complexity and ostentation in building form and the articulation of details. All building materials to be used shall express their specific properties. For example, heavier more permanent materials (masonry) support lighter materials (wood).
- (b) Building materials shall be context sensitive and shall reflect a consistency to be found within the sub-district.
  - (i) Brick, stone or masonry building materials are encouraged for exterior walls.

### **(3) Roofs and PARAPETS**

- (a) Roofs and PARAPETS should demonstrate a commonsense recognition of the climate by utilizing appropriate pitch, drainage, and materials.
- (b) BUILDINGS without visible roof surfaces and overhanging eaves may have a cornice projecting horizontally between six (6) and twelve (12) inches beyond the building walls. For BUILDINGS three stories or taller, the cornice projection shall increase an additional six (6) and twelve (12) inches per STORY.
- (c) Skylights and roof vents are permitted only on the roof plane opposite the primary STREET or when shielded from the STREET view by the building's PARAPET wall.
- (d) Overly elaborate, "postmodern" and/or "high-tech" designs are discouraged. However, ornamentation which contributes to the character of the building is encouraged. BUILDING designs need to reflect the adjacent massing. Ornamentation should be consistent with that used in the neighborhood of BUILDINGS to reinforce the fabric and richness of the community.

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- (e) Green roof technologies are encouraged. Vegetative cover should be considered for flat roofs and solar panels should be considered for integration into pitched roof STRUCTURES.

### **(4) Street Walls**

- (a) STREET WALLS establish a clear edge to the STREET in locations where the BUILDINGS do not. The CBD requirements include masonry walls that define outdoor spaces and separate the STREET from the private realm (parking LOTS, trash cans, gardens, and equipment). All STREET WALL façades shall be as carefully designed as the building façade, with the finished side out, i.e. the “better” side facing the STREET.

### **(5) Windows and Doors**

- (a) Windows should be divided by multiple panes of glass. This helps the window “hold” the surface of the façade, rather than appearing like a “hole” in the wall (an effect produced by a large single sheet of glass).

### **(6) Lighting and Mechanical Equipment**

- (a) Materials and equipment chosen for lighting fixtures should be durable, energy efficient and weather well. Appropriate lighting is desirable for nighttime visibility, crime deterrence, and decoration. However, lighting that is too bright or intense creates glare, hinders night vision, and creates light pollution.

#### **(b) STREET LIGHTS:**

- (i) In order to minimize light pollution, light should be directed downward to the immediate area being lighted and away from any living quarters.
- (ii) Lights shall be located sixteen (16) feet above grade with a maximum average spacing (per BLOCK FACE) of sixty (60) feet on center
- (iii) At the front of the building, exterior lights shall be mounted between six (6) feet and fourteen (14) feet above the adjacent grade.
- (iv) Floodlights or directional lights (maximum seventy-five (75)-watt bulbs) may be used to illuminate parking garages and working (maintenance) areas, but must be shielded or aimed in such a way that they do not shine into other LOTS, or the STREET.

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(v) Floodlighting shall not be used to illuminate building walls (i.e. no up-lighting), except in the Mill sub-district.

(vi) Site lighting shall be of a design and height so as to illuminate only the LOT.

(vii) No flashing, traveling, animated, or intermittent lighting shall be visible from the STREET on the exterior of any building, whether such lighting is of temporary or long-term duration.

### **(c) Mechanical Equipment**

(i) The following shall not be stored or located within any STREET, and be screened from view from the STREET:

a. Air compressors, mechanical pumps, exterior water heaters, water softeners, utility and telephone company transformers, meters or boxes, garbage cans, storage tanks, and the like may not be stored or located within any area considered a front yard under this Code.

(ii) Roof mounted equipment shall be screened from view from the STREET.

## **G. Incentives for Architectural Standards**

(1) Any plan that demonstrates reasonable use of the optional architectural standards defined in Section F, may apply for the following incentives:

(a) Fast track review

The Planning Director shall give preference to projects in setting the Planning Board agendas and in other review processes.

(2) Reasonable use shall be considered demonstration of at least six (6) of the criteria or items mentioned under Section F. These criteria/items will be listed on a waiver application form.

## **H. Administration**

(1) The CBD district exists like every other district and development within is intended to be reviewed and approved as any other district. Any appeals of this section shall be treated as any other zoning appeal and shall be directed to the Zoning Board of Appeals (as outlined in 170 – 52). Projects submitted shall follow the process outlined with Chapter 149, Site Review Regulations.

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- (2) Any redevelopment within the CBD is exempt from Wetlands Regulations as described and administered in this Chapter.

### **170-21. SMALL WIND ENERGY SYSTEM.** [Amended on 02-22-2012 by Ord. No. 2012.01.25; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

#### **A. Authority/Purpose:**

This SMALL WIND ENERGY SYSTEMs ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate SMALL WIND ENERGY SYSTEMs in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for SMALL WIND ENERGY SYSTEMs to ensure compliance with the provisions of the requirements and standards established herein.

#### **B. Procedure for Review:**

- (1) Building Permit: SMALL WIND ENERGY SYSTEMs and met TOWERs are an accessory use permitted in all zoning districts where STRUCTUREs of any sort are allowed. No SMALL WIND ENERGY SYSTEM shall be erected, constructed, or installed without first receiving a building permit from the Building Inspector. A building permit shall be required for any physical modification to an existing SMALL WIND ENERGY SYSTEM. Met TOWERs that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
- (2) Application: Applications submitted to the Building Inspector shall contain a site plan with the following information:
  - (a) Property lines and physical dimensions of the APPLICANT's property.
  - (b) Location, dimensions, and types of existing major STRUCTUREs on the property.
  - (c) Location of the proposed SMALL WIND ENERGY SYSTEM, foundations, guy anchors and associated equipment.
  - (d) TOWER foundation blueprints or drawings.
  - (e) TOWER blueprints or drawings.
  - (f) Setback requirements as outlined in this ordinance.
  - (g) The RIGHT-OF-WAY of any public road that is contiguous with the property.

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- (h) Any overhead utility lines.
  - (i) SMALL WIND ENERGY SYSTEM specifications, including manufacturer, model, rotor diameter, TOWER HEIGHT, TOWER type, nameplate generation capacity.
  - (j) SMALL WIND ENERGY SYSTEMs that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - (k) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - (l) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - (m) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - (n) List of abutters to the APPLICANT's property.
- (3) ABUTTER and Regional Notification: In accordance with RSA 674:66, the Building Inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a SMALL WIND ENERGY SYSTEM. The public will be afforded 30 days to submit comments to the Building Inspector prior to the issuance of the building permit. The Building Inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Building Inspector shall follow the procedures set forth in RSA 36:57, IV.

### **C. Standards:**

- (1) The Building Inspector shall evaluate the application for compliance with the following standards;
  - (a) SETBACK: The setback shall be calculated by multiplying the minimum setback requirement number by the SYSTEM HEIGHT and measured from the center of the TOWER base to property line, public roads, or nearest point on the foundation of an occupied BUILDING.

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<b>Minimum Setback Requirements</b>			
Occupied BUILDINGs on Participating Landowner Property	Occupied BUILDINGs on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- (i) SMALL WIND ENERGY SYSTEMs must meet all setbacks for principal STRUCTUREs for the zoning district in which the system is located.
- (ii) Guy wires used to support the TOWER are exempt from the SMALL WIND ENERGY SYSTEM setback requirements.
- (b) TOWER: The maximum TOWER HEIGHT shall be restricted to thirty five (35) feet above the tree canopy within three hundred (300) feet of the SMALL WIND ENERGY SYSTEM. In no situation shall the TOWER HEIGHT exceed one hundred fifty (150) feet.
- (c) Sound Level: The SMALL WIND ENERGY SYSTEM shall not exceed sixty (60) decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- (d) SHADOW FLICKER: SMALL WIND ENERGY SYSTEMs shall be sited in a manner that does not result in significant SHADOW FLICKER impacts. Significant shadow flicker is defined as more than thirty (30) hours per year on abutting occupied BUILDINGs. The APPLICANT has the burden of proving that the SHADOW FLICKER will not have significant adverse impact on neighboring or adjacent uses. Potential SHADOW FLICKER will be addressed either through siting or mitigation measures.
- (e) SIGNS: All SIGNS including flags streamers and decorative items, both temporary and permanent, are prohibited on the SMALL WIND ENERGY SYSTEM, except for manufacturer identification or appropriate warning signs.
- (f) Code Compliance: The SMALL WIND ENERGY SYSTEM shall comply with all applicable sections of the New Hampshire State BUILDING Code.

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- (g) Aviation: The SMALL WIND ENERGY SYSTEM shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- (h) Visual Impacts: It is inherent that SMALL WIND ENERGY SYSTEMs may pose some visual impacts due to the TOWER HEIGHT needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - (i) The APPLICANT shall demonstrate through project site planning and proposed mitigation that the SMALL WIND ENERGY SYSTEM's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - (ii) The color of the SMALL WIND ENERGY SYSTEM shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - (iii) A SMALL WIND ENERGY SYSTEM shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the APPLICANT shall provide a copy of the FAA determination to establish the required markings and/or lights for the SMALL WIND ENERGY SYSTEM.
- (i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed SMALL WIND ENERGY SYSTEM must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
- (j) Utility Connection: If the proposed SMALL WIND ENERGY SYSTEM is to be connected to the power grid through NET Metering, it shall adhere to RSA 362-A:9.
- (k) Access: The TOWER shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8



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feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

- (l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the SMALL WIND ENERGY SYSTEM and as otherwise prescribed by applicable laws, regulations, and ordinances.

### **D. Abandonment:**

- (1) At such time that a MALL WIND ENERGY SYSTEM is scheduled to be abandoned or discontinued, the APPLICANT will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- (2) Upon abandonment or discontinuation of use, the owner shall physically remove the SMALL WIND ENERGY SYSTEM within ninety (90) days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Building Inspector. "Physically remove" shall include, but not be limited to:
  - (a) Removal of the WIND GENERATOR and TOWER and related above-grade STRUCTURES.
  - (b) Restoration of the location of the SMALL WIND ENERGY SYSTEM to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- (3) In the event that an APPLICANT fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous twelve (12) month period. After the twelve (12) months of inoperability, the Building Inspector may issue a Notice of Abandonment to the owner of the SMALL WIND ENERGY SYSTEM. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. After review of the information provided by the owner, the Building Inspector shall determine if the SMALL WIND ENERGY SYSTEM has been abandoned. If it is determined that the SMALL WIND ENERGY SYSTEM has not been abandoned, the Building Inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
- (4) If the owner fails to respond to the Notice of Abandonment or if, after review by the Building Inspector, it is determined that the SMALL WIND ENERGY SYSTEM has been abandoned or discontinued, the owner of the SMALL WIND

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ENERGY SYSTEM shall remove the wind generator and TOWER at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the SMALL WIND ENERGY SYSTEM after the Notice of Abandonment procedure, the Building Inspector may pursue legal action to have the SMALL WIND ENERGY SYSTEM removed at the owner's expense.

### **E. Violation:**

It is unlawful for any person to construct, install, or operate a SMALL WIND ENERGY SYSTEM that is not in compliance with this ordinance. SMALL WIND ENERGY SYSTEMS installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the SMALL WIND ENERGY SYSTEM.

### **F. Penalties:**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by RSA 676:17.

**170-22. Telecommunication Facilities.** [Amended on 03-18-98 by Ord. No. 02-98; Amended on 10-20-99 by Ord. No. 13-99; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

- A. Authority. By the authority granted under RSA 674:16 and 674:21 and procedurally under the guidance of 675:1, II, this section creates an ordinance establishing a telecommunications program and amending the zoning code to add regulations pertaining to wireless communications facilities.
- B. Purpose and Intent. This ordinance is enacted in order to establish general guidelines for the siting of telecommunication towers and ANTENNAS and to enhance and fulfill the following goals:
  - (1) Preserve the authority of the City to regulate and to provide for reasonable opportunities for the siting of telecommunications facilities while ensuring that telecommunications providers service remains effective and efficient.
  - (2) Reduce or eliminate adverse impacts such facilities may create. Adverse impacts may include, but are not limited to, impacts on aesthetics, impacts on environmentally sensitive areas, impacts to historically significant locations, impacts on flight corridors, reduction in property values, and health and safety concerns.

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- (3) Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future location availability, innovative siting techniques, and siting possibilities beyond the geographic boundaries of the City.
  - (4) Permit the construction of new towers only where all other reasonable alternatives have been exhausted, and to encourage the owners and users of towers and ANTENNAS to configure them in a manner that minimizes visual impacts of said structures.
  - (5) Require ANTENNA co-location on existing TOWER STRUCTURES through cooperation and agreements between providers.
  - (6) Provide for documentation of scheduling of recurring maintenance and safety inspections for all telecommunications facilities and appurtenances.
  - (7) Provide for the demolition and removal of abandoned facilities. Provide a procedure for the City to remove abandoned towers to provide for the health and safety of citizens.
  - (8) Provide for the removal or upgrade of technologically outmoded facilities.
- C. Location. Telecommunication Facilities shall be allowed in accordance with the following:

- (1) On parcels situated in the City of Dover known as:

<b><u>General Location</u></b>	<b><u>Map-LOT Number</u></b>
Finch Lane	K-35A
Middle Road	M-57
Blackwater Road	A-29
	A-1
Parsons Lane	A-36
Venture Drive	D-7
	D-5A
Glen Hill Road	C-2012
	C-7
	C-8
	C-20
	C-19
	C-22
Tolend Road	C-27
French Cross Road	F-14

- (2) In other areas within the City of Dover only as a co-location on Existing Towers, ANTENNAS, and ALTERNATIVE TOWER STRUCTURES.

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### **D. Telecommunication Facilities Procedural Requirements.**

- (1) Location or replacement of Telecommunication Facilities on existing towers or Towers or ANTENNAS or ALTERNATIVE TOWER STRUCTURES.

The location or replacement of telecommunication facilities on existing towers or ANTENNAS or ALTERNATIVE TOWER STRUCTURES may be approved by the Planning Department provided the following information is submitted in an application:

- (a) A scaled plan detailing exact size and location of the telecommunication device including a scaled elevation view.
- (b) Submission of proof that the telecommunication device is needed to service City of Dover residents.
- (c) Proof that the device meets all other technical requirements of this ordinance.

Any application denied by the Planning Department may be appealed to the PLANNING BOARD.

- (2) Proposed construction of New Telecommunications Facilities.

An application for construction of any new telecommunications facilities shall be approved by the PLANNING BOARD. Public hearing requirements as outlined in the Site Review Regulations shall apply. The following application requirements shall be provided:

- (a) A scaled plan in accordance with Site Review Regulations shall be submitted including the following additional information; a scaled elevation view, topography, radio frequency coverage, TOWER HEIGHT requirements, SETBACKS, drives, parking, fencing, landscaping, adjacent land uses (up to two hundred (200) feet away), and any other information deemed necessary by the Planning Director.
- (b) Written proof that the proposed use/facility complies with FCC regulations on radio frequency (RFD) exposure guidelines, and FAA regulations on TOWER lighting requirements.
- (c) The APPLICANT shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEAP) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an

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Environmental Impact Statement (IS) is required under the FCC rules and NEAP, submission of the EA or IS to the PLANNING BOARD prior to the beginning of the federal thirty (30) day comment period, and the City's site review process, shall become part of the application requirements.

- (d) Each APPLICANT for an ANTENNA and/or TOWER shall provide to the PLANNING BOARD an inventory of its existing towers that are within the jurisdiction of the City and those within two (2) miles of the border thereof, including specific information about the location, HEIGHT, design of each TOWER, as well as economic and technological feasibility for co-location on the inventoried towers. The PLANNING BOARD may share such information with other APPLICANTS applying for approvals or special exception permits under this ordinance or other organizations seeking to locate ANTENNAS within the jurisdiction of the governing authority, provided, however that the PLANNING BOARD is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

The APPLICANT shall submit written evidence demonstrating that no existing STRUCTURE can accommodate the APPLICANT's proposed ANTENNA. This evidence shall consist of one or more of the following:

- (i) Adequate evidence that no existing towers or STRUCTURES are located within the geographic area required to meet the APPLICANT's engineering requirements, provided that a description of the geographic area required is also submitted.
- (ii) Adequate evidence that existing towers are not of sufficient HEIGHT to meet the APPLICANT's engineering requirements, and why.
- (iii) Adequate evidence that the existing towers or STRUCTURES do not have sufficient structural strength to support APPLICANT's proposed ANTENNA and related equipment.
- (iv) Adequate evidence that APPLICANT's proposed ANTENNA would cause electromagnetic interference with the ANTENNA on the existing towers or STRUCTURES, or the ANTENNA on the existing towers or STRUCTURES would cause interference with the APPLICANT's proposed ANTENNA.
- (v) Adequate evidence that fees, costs, or contractual provisions required by the owner in order to share the existing TOWER or STRUCTURE are unreasonable. Costs exceeding new TOWER development are presumed to be unreasonable.

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- (vi) Adequate evidence that the APPLICANT can demonstrate other limiting factors that render existing towers and STRUCTURES unsuitable.
- (e) The APPLICANT proposing to build a new TOWER shall submit an agreement with the City that allows for the maximum allowance of co-location upon the new STRUCTURE. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the APPLICANT to supply available co-location for reasonable fees and costs to other telecommunication providers. All agreements shall outline a procedure requiring all disputes on terms and conditions of co-location be submitted to a recognized commercial arbitration board for their review. The arbitration board's decision shall become final and binding. Failure to provide such an agreement is evidence of the APPLICANT's unwillingness to cooperate with the orderly and well-planned development of the (City), and grounds for a Denial.
- (f) The APPLICANT shall submit the engineering information detailing the size and coverage required for the facility location. The PLANNING BOARD may have this information reviewed by a consultant for verification of any claims made by the APPLICANT regarding technological limitations and feasibility for Alternative locations. Cost for this review shall be borne by the APPLICANT in accordance with RSA 676:4(g).
- (g) Each APPLICANT for a TOWER, monopole, or Alternative STRUCTURE shall submit a design certified by a competent engineer that the STRUCTURE has been engineered to accommodate the maximum number and type of all compatible telecommunication media ANTENNAE, but in no event shall the APPLICANT provide fewer than three additional co-locations from three additional providers. This provision may be modified based on visual or aesthetic impacts.

### **E. Performance Standards.**

The uses listed in this section are deemed to be permitted uses, and at the discretion of the PLANNING BOARD, may require further review under this Chapter in accordance with Chapter 149, Site Review Regulations, and all other applicable ordinances and regulations of the City of Dover.

- (1) Principal or Secondary Use. Subject to this ordinance, an APPLICANT who obtains site review approval to site under this ordinance as a secondary and permitted use, may construct telecommunications facilities in addition to the existing principal use. ANTENNAS and towers may be considered either

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principal or secondary uses. A different existing use or an existing STRUCTURE shall not preclude the installation of an ANTENNA or TOWER on such LOT.

For purposes of determining whether siting of an ANTENNA or TOWER complies with zoning district development regulations, including, but not limited to area, SETBACK, lot coverage, FRONTAGE, and other dimensional requirements, the dimensions of the entire LOT shall control, even though the ANTENNAS or towers may be located on leased parcels within such LOTS. Towers that are constructed, and ANTENNAS that are installed in accordance with the provisions of this ordinance, shall not be deemed the expansion of a non-conforming use or STRUCTURE. Further, said facilities shall not be considered an ACCESSORY USE.

### **(2) HEIGHT Requirements.**

- New TOWER Construction – one hundred eighty (180) feet maximum.
- Co-location on Existing TOWER and ANTENNAS – current HEIGHT plus fifteen percent (15%) (not to exceed two hundred (200) feet)
- Co-location on ALTERNATIVE TOWER STRUCTURES – current HEIGHT plus twelve (12) feet

The HEIGHT requirements and limitations outlined above shall preempt all other HEIGHT regulations as required by the City of Dover Zoning Ordinance, and shall apply only to telecommunications facilities. A Conditional Use Permit may be granted by the PLANNING BOARD to waive the HEIGHT limitations only if the intent of this Chapter is preserved (e.g. when it can be shown that there would be no increase in adverse impact) and the increased HEIGHT would provide a greater opportunity for co-location provided that:

- (a) The granting of the permit will not be detrimental to the public safety, health or welfare or injurious to other property, and will promote the public interest.
- (b) A written narrative identifying a particular hardship or special circumstance that warrants granting the permit. Factors to be considered, but not limited to, in determining a hardship or special circumstance shall include:
  - (i) topography and other site features
  - (ii) availability of Alternative site locations
  - (iii) property location as relates to required coverage area

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- (iv) size/magnitude of project and availability of co-location
  - (c) Necessary federal approvals and/or recommendations have been received.
- (3) SETBACKS and Separation. The following SETBACKS and separation requirements shall apply only to telecommunications facilities, and shall supersede all other such standards found elsewhere in this Chapter or other applicable City Ordinances and Regulations.
- (a) Towers shall be set back a distance equal to one hundred percent (100%) of the HEIGHT of the TOWER from any boundary line, or other principal use STRUCTURE located on the property the TOWER is sited upon. This provision may be waived by the PLANNING BOARD provided the intent of this Chapter remains intact.
  - (b) TOWER guys, and all other accessory facilities shall conform with the minimum SETBACK requirement of the zoning district in which said facilities and appurtenances are located.
- (4) Security Fencing. Towers shall be enclosed by appropriate security fencing not less than six (6) feet in HEIGHT, and shall be equipped with an appropriate anti-climbing device.
- (5) Landscaping.
- (a) Towers shall be landscaped with a buffer of suitable vegetation that effectively screens the view of the TOWER compound from abutting residential property. The minimum standard buffer shall consist of a landscaped strip ten (10) feet wide outside the perimeter of the TOWER compound. Existing (natural) vegetation is preferred.
  - (b) The requirement for landscaped screening may be reduced or waived entirely by the PLANNING BOARD in locations where the visual impact of the TOWER compound to abutting residential uses is deemed to be minimal.
  - (c) Existing mature tree growth and natural land forms present on the site shall be preserved to the maximum extent possible. Natural growth on the site may be deemed a sufficient buffer on large, remote, wooded LOTS.
- (6) Aesthetics and Lighting. The guidelines in this subsection shall govern the location of all towers, and the installation of all ANTENNAS. However, the PLANNING BOARD may waive those requirements, via Conditional Use Permit, only if it determines that the goals of this Chapter are served thereby.



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- (a) Towers shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
  - (b) At a TOWER site, the design of BUILDINGS and related STRUCTURES shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the TOWER facilities with the natural setting and previously developed environment. These BUILDINGS and facilities shall also be subject to all other Chapter 149 Site Review Regulations requirements.
  - (c) If an ANTENNA is installed on a STRUCTURE other than a TOWER, the ANTENNA and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting STRUCTURE so as to make the ANTENNA and related equipment as visually unobtrusive as possible.
  - (d) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
  - (e) Towers shall not contain any permanent or temporary SIGNS, writing, symbols, or any graphic representation of any kind.
- (7) Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and ANTENNAS. If such standards and regulations are changed, then the owners of the towers and ANTENNAS governed by this Chapter shall bring such towers and ANTENNAS into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and ANTENNAS into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with this Chapter 170-22.I, , of the TOWER or ANTENNA, as abandoned, at the owner's expense through the execution of the posted security.
- (8) BUILDING Codes – Safety Standards. To ensure the structural integrity of towers and ANTENNAS, the owner of a TOWER shall ensure that it is maintained in compliance with standards contained in applicable local BUILDING codes and the applicable standards for towers that are published by the Electronic Industries

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Association, as amended from time to time. If, upon inspection, the City concludes that a TOWER fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the TOWER, the owner shall have thirty (30) days to bring such TOWER into compliance with such standards. If the owner fails to bring such TOWER into compliance within thirty (30) days, such action shall constitute an abandonment and grounds for the removal, in accordance with this Chapter 170-22.I, of the TOWER or ANTENNA, as abandoned, at the owners expense through execution of the posted security.

- (9) Certification of safety standards and continued need. The owner of a TOWER or ANTENNA shall provide an annual certification to the Planning Department verifying compliance with building codes and safety standards. The certification shall also verify that the STRUCTURE is still needed for the operation of the owners network. Said certification shall be submitted to the Planning Department prior to December 31st of each year. Any owner who has failed to submit an annual certification shall be notified of the violation. A thirty (30) day extension for submission of a certification may be approved at the discretion of the Planning Department. After notification of a violation by the Planning Department subsequent failure to submit an annual certification shall constitute abandonment and be grounds for removal in accordance with 170-22.I).

### **F. Exemptions.**

- (1) City Use. ANTENNAS or towers owned, performing City functions, or otherwise controlled by the City shall be exempt from the requirements of this TELECOMMUNICATIONS FACILITY Ordinance. This exemption shall only be available if a license or lease authorizing such ANTENNA or TOWER has been approved by the City Council, and the City Council elects, subject to RSA's, to seek said exemption.
- (2) Amateur Radio. This section shall not govern any TOWER, or the installation of any ANTENNA that is owned and operated by a federally-licensed amateur radio station operator and the TOWER or ANTENNA is used for the exclusive purpose of amateur radio operations. This application adopts the provisions and limitations as referenced in RSA 674:16,IV.
- (3) Citizen Band Radios. This section shall not govern the installation of any ANTENNA that is used for the exclusive purpose of facilitating the use of a Citizen Band Radio, except any towers in this section shall be limited to seventy (70) feet in HEIGHT.

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- (4) Receive-Only ANTENNAS. This section shall not govern any TOWER, or the installation of any ANTENNA that is used exclusively for receive-only ANTENNAS, except any towers in this section shall be limited to seventy (70) feet in HEIGHT.
- (5) Essential Services and Public Utilities. Henceforth, from the date of adoption of this ordinance, telecommunications facilities shall not be considered as infrastructure, essential services, or public utilities, as defined or used elsewhere in the City's ordinances and regulations.

Siting for telecommunications facilities shall be considered a use of land, and is addressed by this ordinance.

### **G. Restrictions for Siting on Garrison Hill**

Notwithstanding the provisions outlined in Subsection C, the siting of additional towers, monopoles, or use of Alternative STRUCTURES shall be prohibited on Garrison Hill in the City of Dover. Placement of new ANTENNAE media on the existing towers on Garrison Hill shall be allowed only after obtaining a Conditional Use Permit from the PLANNING BOARD. However, the replacement and/or repair of existing ANTENNAE media on towers on Garrison Hill is allowed by the Building Inspector, provided that there is no increase in the size or visual impact of the ANTENNAE. Performance standards to ensure that vistas, view sheds and view corridors are protected shall include the following elements:

- (1) The APPLICANT has demonstrated that the appearance, form or shape, color, and size of any ANTENNA media to be attached to preexisting towers or monopole structures is concealed or camouflaged or otherwise is harmonious with the immediately surrounding environment at Garrison Hill;
- (2) Any equipment shelters supporting such additional ANTENNA shall be designed consistent with one of the following design standards:
  - (a) Equipment shelter shall be located in underground vaults; or
  - (b) Equipment shelter shall be designed consistent with Northern New England architectural styles and materials, with a roof pitch of at least ten and a half (10 1/2) and wood clapboard, red brick or shingle siding; or
  - (c) Equipment shelters shall be camouflaged behind an effective year round landscaped buffer, equal to the HEIGHT of the proposed BUILDING and/or wooden FENCE. PLANNING BOARD shall determine the style of fencing and/or landscaped buffer that is compatible with the NEIGHBORHOOD.

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- (3) Any ANTENNA located on an existing STRUCTURE shall be concealed, to the extent technologically and commercially practicable, behind existing architectural features to limit the visibility of the ANTENNA from public ways.

### **H. Bonding and Security and Insurance.**

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the PLANNING BOARD shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the TOWER is abandoned and the TOWER owner is incapable and unwilling to remove the TOWER in accordance with Subsection I) below.

Bonding and surety shall be consistent with the provisions in the Chapter 155, Subdivision of Land. Furthermore, the PLANNING BOARD shall require the submission of proof of adequate insurance covering accident or damage.

### **I. Removal of Abandoned ANTENNAS and Towers.**

Any ANTENNA or TOWER that is not operated for a continuous period of twelve (12) months, or is no longer needed for the operation of the network, shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned STRUCTURE within ninety (90) days of receipt of a declaration of abandonment from Zoning Administrator notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing notice per City regulations, with notice to ABUTTERS and the last known owner/operator of the TOWER. If the abandoned TOWER is not removed within ninety (90) days, the City may execute the security and have the TOWER removed. If there are two or more users of a single TOWER, this provision shall not become effective until all users cease using the TOWER.

## **170-23. IMPACT FEE Ordinance.** [Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

- A. Purpose: This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to:
- Promote public health, safety, convenience, welfare, and prosperity;
  - Insure that adequate and appropriate public facilities are available; and
  - Provide for the harmonious development of the City and its environs.

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For consideration in lieu of above:

- (1) Assist in the implementation of the Master Plan and Capital Improvements Program;
- (2) Provide adequate public capital facilities necessitated by NEW DEVELOPMENT;
- (3) Assess an equitable share of the cost of public capital facilities to NEW DEVELOPMENT.

### **B. Authority**

- (1) IMPACT FEES may be assessed to NEW DEVELOPMENT to compensate the City of Dover and the School District for the proportional share of capital facilities generated by NEW DEVELOPMENT in the City of Dover. Any person who seeks approval for NEW DEVELOPMENT may be required to pay an IMPACT FEE in the manner set forth herein.
- (2) The PLANNING BOARD may, as a condition of approval of any subdivision, site plan, or change of use, and when consistent with applicable Board regulations, require an APPLICANT to pay exaction for off site improvements necessitated by the development.
- (3) Nothing in this section shall be construed to limit the existing authority of the PLANNING BOARD to disapprove proposed development which is scattered or premature, or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall be construed to limit the PLANNING BOARD's authority to require off-site work to be performed by the APPLICANT, in lieu of paying an exaction for OFF-SITE IMPROVEMENTS, or the board's authority to impose other types of conditions of approval. Nothing in this section shall be construed to affect types of fees governed by other statutes, ordinances or regulations.

### **C. ASSESSMENT Methodology**

- (1) Proportionality: The amount of the IMPACT FEE shall be calculated by the PLANNING BOARD to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. The PLANNING BOARD may prepare, adopt, or amend studies or reports that are consistent with the above standards, and

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which define a methodology for IMPACT FEE ASSESSMENT for public capital facilities and IMPACT FEE ASSESSMENT schedules therefore.

- (2) Existing Deficiencies: Upgrading of existing facilities and structures, the need for which is not created by NEW DEVELOPMENT, shall not be paid for by IMPACT FEES.

### **D. Administration**

- (1) Accounting: In accord with RSA 673:16, II and RSA 674:21, V(c), IMPACT FEES shall be accounted for separately, shall be segregated from the City's general fund, may be spent upon order of the City Council, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet. In the event that bonds or similar debt instruments have been or will be issued by the City of Dover or the Dover School District for the funding of capital improvements that are the subject of IMPACT FEE ASSESSMENT, IMPACT FEES from the appropriate related capital facility IMPACT FEE accounts may be applied to pay debt service on such bonds or similar debt instruments.

### **(2) ASSESSMENT and COLLECTION:**

- (a) Where subdivision or site plan approval is required for NEW DEVELOPMENT, IMPACT FEES shall be assessed at the time of PLANNING BOARD approval of a subdivision PLAT or site plan. The amount of such ASSESSMENT shall be applicable to subsequent BUILDING construction within the approved subdivision or site plan for a period of four (4) years from the date of PLANNING BOARD approval. Once this four (4) year period has expired, remaining construction for which no building permit has been obtained shall be subject to the adopted fee schedule in force at the time the building permit application is made.
- (b) With the exception of those PLATS and site plans meeting the conditions in A) above, and when no other PLANNING BOARD approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, IMPACT FEES shall be assessed upon the issuance of a building permit. In such cases, the impact fee schedule in force at the time of the building permit application shall apply.
- (c) IMPACT FEES will be collected prior to or at the time of issuance of a building permit, unless the PLANNING BOARD establishes an alternate , mutually acceptable schedule of payment of IMPACT FEES imposed on an

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ASSESSED PROPERTY. If an alternate schedule of payment is established, the PLANNING BOARD may require security, in the form of a cash bond, letter of credit, or performance bond so as to guarantee future payment of IMPACT FEES. In no case will an IMPACT FEE payment be allowed to be made after the issuance of a CERTIFICATE OF OCCUPANCY.

- (3) Security: In the interim between ASSESSMENT and COLLECTION, the Building Inspector may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed IMPACT FEES.
- (4) Refund of Fees Paid: The current owner of record of property for which an IMPACT FEE has been paid shall be entitled to a refund of that fee, plus accrued interest under the following circumstances:
  - (a) When either the full or partial portion of the IMPACT FEE, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
  - (b) When the City of Dover, or in the case of school IMPACT FEES, the Dover School District, has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate their proportionate non-IMPACT FEE share of related capital improvement costs.

### **E. Appeals**

- (1) A party aggrieved by a decision made by the Building Inspector regarding the ASSESSMENT or COLLECTION of IMPACT FEES authorized by this Section may appeal such decision to the PLANNING BOARD.
- (2) In accord with RSA 676:5, III, appeals of the decision of the PLANNING BOARD in administering this ordinance may be made to Superior Court, as provided in RSA 676:5, III and RSA 677:15.

### **F. Waivers**

- (1) The PLANNING BOARD may grant full or partial waivers of IMPACT FEES where the PLANNING BOARD finds that one (1) or more of the following criteria are met with respect to the particular public capital facilities for which IMPACT FEES are normally assessed:

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- (a) An APPLICANT may request a full or partial waiver of school IMPACT FEES for those residential units that are lawfully restricted to occupancy by senior citizens age sixty two (62) or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The PLANNING BOARD may waive school IMPACT FEE ASSESSMENTS on such age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age sixty two (62) or over for a period of at least twenty (20) years.
- (b) A person may request a full or partial waiver of IMPACT FEES for construction within a subdivision or site plan approved by the PLANNING BOARD prior to the effective date of this ordinance. Prior to granting such a waiver, the PLANNING BOARD must find that the proposed construction is entitled to the four (4) year exemption provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to phases of a phased development project where active and substantial development, BUILDING and construction has not yet occurred in the phase in which construction is proposed.
- (c) The PLANNING BOARD may agree to waive all or part of an IMPACT FEE ASSESSMENT and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of IMPACT FEES under this provision that would involve a contribution of real property or the construction of capital facilities; the PLANNING BOARD shall submit a copy of the waiver request to the City Council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of IMPACT FEE ASSESSMENT. The APPLICANT shall pay all costs incurred by the City for the review of such proposal, including consultant and counsel fees.

### **170-24. ACCESSORY DWELLING UNITS.** [Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

Where permitted, an ACCESSORY DWELLING UNIT shall comply with the following:

- A. A maximum of one (1) accessory dwelling unit (ADU) per property is permitted. An ADU shall not be permitted on property where more than one DWELLING UNIT currently exists.
- B. Exterior alterations, enlargements, or extensions of the SINGLE FAMILY DWELLING or detached ACCESSORY STRUCTURE are permitted in order to



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accommodate the ACCESSORY DWELLING UNIT. However, no such change is permitted which would alter the appearance of the SINGLE FAMILY DWELLING to look like a duplex or any other multi-family structure (i.e., the house should not look like it was designed to occupy more than one family). The construction of any access ways into the house and/or detached garage which are required for access to the ACCESSORY DWELLING UNIT shall be located to the side or rear of the building whenever possible.

- C. An ADU shall have an area of no less than 300 square feet and no greater than 800 square feet. An attached accessory dwelling unit shall occupy no more than 30% of the FLOOR AREA of the SINGLE-FAMILY DWELLING, including the ADU. If located in a detached ACCESSORY STRUCTURE, the ACCESSORY DWELLING UNIT shall be located entirely on the second floor of the structure.
- D. A minimum of one dedicated off-street parking space shall be provided for the ADU.
- E. The SINGLE-FAMILY DWELLING (and detached ACCESSORY STRUCTURE, when applicable) and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the SINGLE-FAMILY DWELLING. In order to assure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the City, which shall be recorded in the Strafford County Registry of Deeds and a copy provided to the Planning and Community Development Department and the Assessor prior to the issuance of a CERTIFICATE OF OCCUPANCY.
- F. The property owner must occupy one of the two DWELLING UNITs. Electric, water and sewer utilities shall be metered on a single bill.
- G. Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.
- H. A certificate of use issued by the Zoning Administrator is required to verify conformance with the preceding standards. Said certificate shall be renewed annually. Applications to renew the certificate of use shall be due by January 1st following the date of approval of the certificate of use and then by every January 1st thereafter for so long as the ACCESSORY DWELLING UNIT continues. Fees shall be levied as set forth in the City of Dover Adopted Schedule of Fees, as amended annually, for ACCESSORY DWELLING UNIT certificates of use and renewals.

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### **170-25. Reserved.**

## **ARTICLE VII**

### **OVERRIDING DISTRICTS**

### **170-26. Additional Regulations.**

All overriding districts shall be superimposed upon other zoning districts established in this chapter. The regulations stipulated by the overriding districts shall be in addition to the regulations of the underlying zoning districts and other applicable city ordinances.

**170-27. Conservation District.** [Amended on 5-13-87 by Ord. No. 11-87; Amended on 9-14-88 by Ord. No. 15-88; Amended on 08-01-90 by Ord. No. 8-90; Amended on 02-17-99 by Ord. No. 25-98; Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

A. Purpose. In the interest of environmental quality, public health, resource conservation and the general welfare of the public, the regulations of this district are designed to guide development activities in areas with extended periods of high water table, with susceptibility to flooding and with unique or fragile geologic, ecological or nature features as follows:

- (1) To prevent the development of STRUCTURES and land uses on naturally occurring wetlands and flood- prone areas which would contribute to pollution of surface and ground water by sewage or other contaminants.
- (2) To prevent the destruction of natural wetlands or aquifer areas which provide flood protection, recharge of groundwater supply and augmentation of stream flow during dry periods.
- (3) To prevent unnecessary or excessive expenses to the city to provide and maintain essential services and utilities which arise because of inharmonious use of wetlands and other environmentally sensitive areas.
- (4) To encourage those uses that can be most appropriately and safely located in wetland and other environmentally sensitive areas.
- (5) To preserve existing natural drainage systems and the vegetation and wildlife habitats therein.
- (6) To preserve wetlands and other environmentally sensitive areas for other ecological reasons inter alia, those cited in RSA 483-B.

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- (7) To preserve and enhance those aesthetic values associated with waterways and the natural shoreline.
- (8) To protect public health and safety by minimizing hazards, including soil erosion, storm water runoff, SLOPE instability risks, and environmental degradation associated with development on steep and/or unstable slopes.

**B. Location.** The Conservation District is hereby determined to consist of the following:

- (1) Those areas within a minimum of one hundred (100) feet of the reference line (as defined in RSA 483-B:4, XVII) of any water body, river, stream, swamp or marsh subject to tidal action and those areas within a minimum of one hundred (100) feet of the reference line (as defined in RSA 483-B:4, XVII) of any freshwater river or natural pond.
- (2) Those areas within a minimum of fifty (50) feet of the reference line (as defined in RSA 483-B:4, XVII) of any stream, brook or other freshwater body.
- (3) Those areas owned by and situated in the City of Dover and known as **LOTS: Map 28, LOT 32; Map D, LOT 1; Map C, LOTS 5, 7 and 12; Map H, LOTS 58 and 63; Map 40, LOTS 10A, 13, and 17; Map F, LOTS 14 and 42; Map A, LOT 29A-1; and Map 37, LOT 40.**
- (4) Those areas with slopes in excess of twenty percent (20%), (e.g. four (4) feet vertical in twenty (20) foot horizontal distance) and totaling more than two thousand (2,000) square feet of CONTIGUOUS area.

**C. Conditional Use Permits.** Conditional Use Permits may be granted by the PLANNING BOARD for the following uses within the Conservation District:

- (1) Streets, roads and other access ways and utility rights-of-way, communications equipment, easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands or other environmentally sensitive areas, where it is physically impossible to locate such ways over land not so zoned. Economic advantage alone shall not be deemed a sufficient reason for such a routing.
- (2) The undertaking of a use not otherwise permitted in the Conservation District, which may include the erection of a STRUCTURE, dredging, filling, draining or otherwise altering the surface configuration of the land, provided that:
  - (a) The APPLICANT shall demonstrate that the proposed use is essential to the productive use of land not in the district; is located and constructed to

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minimize any detrimental impact of such use upon the surface waters or other environmentally sensitive areas, where it is physically impossible to locate such use on land not in the district; and economic advantage alone shall not be deemed a sufficient reason for such proposed use.

(b) A soil erosion and sedimentation control plan is submitted and followed to verify the planned avoidance of sediment pollutant runoff to bodies of water. This plan will address the following (if applicable), but should not be limited to:

- (i) stabilization of exposed soils and soil stockpiles;
- (ii) protection of steep slopes from erosion;
- (iii) construction site waste management;
- (iv) inspection and maintenance of runoff control measures (BMPs);
- (v) minimization of land clearing;
- (vi) stabilization of drainage ways;
- (vii) installation of perimeter controls;
- (viii) installation of sediment trapping devices; and
- (ix) storm drain inlet protection.

(c) Necessary state and federal approvals have been applied for. Said permits shall be received prior to the issuance of the Conditional Use Permit by the Planning Department.

(d) A written review by the Conservation Commission of the environmental effects of the proposed use upon the area in question has been submitted. The Commission's review shall address the following, but is not limited to:

- (i) attempted avoidance of the impact;
- (ii) minimization of the impact;
- (iii) planned mitigation of the effects of the impact; and
- (iv) efficacy of the soil erosion and sedimentation control plan.

D. Procedures for subdivision. No subdivision of land shall be permitted which would create a LOT or parcel or leave as a remainder a LOT or parcel which does not have,

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outside the Conservation District, an area equal to the minimum LOT size or one (1) acre, whichever is less. The ZONING BOARD OF ADJUSTMENT may grant an exception to this rule if such a LOT or parcel is to be permanently dedicated to OPEN SPACE or natural uses and is to be dedicated to a public or private agency having as a purpose the holding of such land in a natural state in perpetuity.

### **E. Other provisions.**

- (1) Reference is hereby made to RSA 483-B, the Comprehensive Shoreland Protection Act which evidences a state concern over preservation of such lands. It is intended that the provisions of that statute shall apply and that in all cases the more restrictive law should apply.
- (2) In all cases where the Conservation District is superimposed over another zoning district in the city, that district whose regulations are the more restrictive shall apply.
- (3) The Conservation District adopted herein is hereby designated as OPEN SPACE under RSA 79-A, and all relevant provisions of RSA 79-A relating to current use ASSESSMENT of such property shall apply.
- (4) The provisions of RSA 483-B:9,V(a) shall apply to the portions of the "Conservation District" as described in Subsections B (1) and B (2), that are within fifty (50) feet of the reference line (as defined in RSA 483-B:4, XVII) Limitations include restrictions on chemical and fertilizer use, preservation of rocks and stumps and their root systems, and restrictions on removal of ground cover, trees and saplings.
- (5) The provisions of RSA 483-B:9,V(b) shall apply to the portion of the "Conservation District" as described in Subsection B (1), that is between fifty (50) and one hundred (100) feet of the reference line (as defined in RSA 483-B:4, XVII). Limitations include restrictions on the amount of vegetation that can be removed within the area.
- (6) Upon the discretion of the Building Inspector, a STRUCTURE may be erected within the Conservation District as described in Subsection B(1) up to but never closer than seventy-five (75) feet of the mean high water mark, provided that:
  - (a) The lot existed within the Conservation District, as recorded in the Strafford County Registry of Deeds, prior to the effective date of this subsection.
  - (b) The STRUCTURE cannot feasibly be constructed on a portion or portions of the lot which are outside the one-hundred-foot (100) setback of the Conservation District.

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- (7) Customary accessory STRUCTURES shall be allowed within the Conservation District as described in Subsection B(1) but in no case closer than seventy- five (75) feet to the reference line (as defined in RSA 483-B:4, XVII).
  - (8) Projects which have been officially accepted by the Planning Board prior to the October 10, 1986, amendment posting date shall be exempt of all revisions herein.
  - (9) Land area contained within the Conservation District can be counted in determining the gross land area of a tract, lot or parcel.
  - (10) The Planning Board may assess the APPLICANT reasonable fees to cover the costs of special investigative studies and for the review of documents required by applications.
  - (11) The city shall have the power to enforce this section, and violations may be punishable by fines as provided by RSA 676:17.
- F. The provisions of the Conservation District adopted herein shall not be binding on Cochecho waterfront LOTS located in Urban Exemption Area, as approved by the NH Department of Environmental Services Commissioner on August 4, 2008, per File # 2008-2000372. (See map on file in the Planning Department)
- G. Boat Docks.
- (1) A boat dock may be allowed on a residential LOT, provided that the following provisions are met:
    - (a) The dock is for recreational and ACCESSORY USE only.
    - (b) One (1) dock is allowed per LOT.
    - (c) The beneficiary of an easement or right-of-way, recorded at the Strafford County Registry of Deeds prior to the October 10, 1986 amendment posting date for the purpose of providing water access to non-waterfront LOTS, shall be entitled to one (1) boat dock within the prescribed easement or right-of-way.
    - (d) All applicable state and federal approvals have been received.
    - (e) A dock may be provided a maximum space for two (2) slips. Joint use or private docks by adjoining waterfront residents, not to exceed two (2) slips per LOT, shall be encouraged when appropriate.

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**170-27.1. Wetland Protection District.** [Amended on 9-14-88 by Ord. No. 15-88; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15]

A. Authority. By the authority granted under RSA 674:16 and 17, this section is designed to protect the wetland areas and surface waters within the City of Dover from certain activities, the impact of which results in the alterations or destruction of wetland areas.

B. Purpose and intent. It is intended that this section shall:

- (1) Prevent the development of STRUCTURES and land uses on wetlands, which will contribute to pollution of surface and ground water by sewerage, toxic substances or sedimentation.
- (2) Prevent the destruction of, or Significant changes to, wetlands which provide flood protection, recharge the groundwater supply and augment stream flow during dry periods and filtration of water flowing into ponds and streams.
- (3) Protect unique and unusual natural areas and rare, threatened, and endangered species.
- (4) Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in RSA 482-A:1.
- (5) Protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas.
- (6) Prevent unnecessary or excessive expense to the city for the purpose of providing and/or maintaining essential services and utilities, which might be required as a result of misuse or abuse of wetlands.
- (7) Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.
- (8) Preserve and enhance the aesthetic values associated with wetlands in the City of Dover.
- (9) Avoid the high costs of constructing heavy STRUCTURES and prevent damage to STRUCTURES and abutting properties caused by inappropriate development in wetland areas.

C. District boundaries

- (1) The Wetlands Protection District is hereby determined to be all areas of wetlands as defined by RSA 482-A:2, X and New Hampshire Administrative Rule Wt

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101.103, which states a “Wetland’ means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

For the purpose of this section, the delineation of wetland protection district boundaries shall be consistent with NHDES Wetlands Bureau Rules Wt. 301.01 or successor regulations

- (2) "Hydrophytic (water-loving) vegetation" is defined as those plants identified in the "1986 Wetland Plant List Northeast Region" of the United States Fish and Wildlife Service. The more common names associated with these vegetative communities are "bogs," "swamps," "marshes," (saltwater and freshwater) and "tidal wetlands."

### **D. Procedural requirements.**

- (1) Presence of Wetland Protection District on site.

- (a) Where field investigation indicate that a Wetland Protection District is present on a proposed development site, those wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January, 1987) or successor document. The hydric soils component of wetlands delineations shall be determined in accordance with the manual Field Indicators for Identifying Hydric Soils in New England (Version 2, July 1998, published by the New England Interstate Water Pollution Control Commission) or successor document. Pursuant to RSA 310-A:75 through 310-A: 87, a Certified Wetland Scientist shall conduct this delineation.

- (i) A Certified Wetland Scientist is defined as: “a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor, and who has been duly certified by the board.” (RSA 310-A:76) If necessary, a botanist shall be used in conjunction with the wetlands scientist to identify wetland vegetation where required. The



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botanist shall have equivalent and practical experience to that of the wetlands scientist.

- (b) Applications for a BUILDING permit, subdivision and site plan approval shall locate and depict on the survey/subdivision PLAT/site plan all Wetland Protection Districts on the subject parcel. Any APPLICANT seeking said approval(s) will be responsible for providing this information before the appropriate approval or permit can be granted.
  - (c) The entire length of the upland limit of the wetland shall be marked at regular intervals with pink and black striped construction tape prior to, and maintained for the full duration of, any construction-related activities. The APPLICANT may also be required to place and maintain wooden stakes and/or construction tape at appropriate intervals along the wetlands buffer boundary to provide sufficient visual evidence of the buffer boundary during construction, if development is proposed within twenty feet of the wetlands buffer. The APPLICANT may be required to affix some form of marker or tag acceptable to the City to permanently delineate the wetlands buffer boundary at appropriate intervals, as determined by the Conservation Commission and PLANNING BOARD, for the purpose of notifying future landowners of the presence of the wetlands buffer. The presence of wetlands on residential properties created as part of a major subdivision shall be documented in the parcel's deed.
- (2) The Planning Department shall notify the Conservation Commission of all projects and construction proposed in wetland districts for the purpose of allowing the Commission to make recommendations prior to approval. Consistent with RSA 482-A: 3I(d) and RSA 482-A:11 III, the Conservation Commission shall have up to 40 days to make recommendations relative to the wetlands impact application. The Conservation Commission, in acting on an application for a conditional use permit in the Wetlands Protection District, may attach conditions to its recommendations including but not limited to recommendations for more extensive buffers, additional plantings in areas to be re-vegetated, performance guarantees, impact mitigation measures, and a reduction in proposed impervious surfaces.
- (3) In the event that the accuracy of the boundaries submitted by the APPLICANT is suspect, the PLANNING BOARD may call upon the services of a certified wetland scientist and/or botanist to reexamine said area and report the findings to the PLANNING BOARD for a boundary determination. The APPLICANT shall pay the cost of said services.

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- (4) The Building Inspector shall not issue a building permit for construction and the PLANNING BOARD shall not approve a site plan or subdivision PLAT unless such construction activity or proposal conforms to the provisions of this Chapter.
- (5) Standards established herein shall constitute the rules of overlay zones and shall be superimposed over other zoning districts or portions thereof. The provisions herein shall apply in addition to all other applicable ordinances and regulations. In the event of a conflict between any provision herein and any other regulation, the more-restrictive requirement shall control.
- (6) The city shall have the power to enforce this section, and violations may be punishable by fines as provided by RSA 676:17.

### **E. Permitted uses.**

- (1) Any use otherwise permitted by this Chapter, except on-site sewage disposal systems, may be permitted in a Wetland Protection District. Any use permitted under Section E (1) must first receive conditional use approval as provided for in Section F before any building permit or subdivision/site plan can be approved.
  - (a) Crossing of a Wetland Protection District as provided for in Section F(1).
  - (b) The construction or reconstruction of FENCES, footbridges, catwalks, boat docks and wharves does not require a conditional use permit, provided that:
    - (i) Said STRUCTURES are constructed on posts or pilings so as to permit unobstructed flow of water and are designed in compliance with the New Hampshire Wetlands Board Code of Administrative Rules (WT 400 and 600).
    - (ii) The natural contour of the wetland is preserved.
    - (iii) All other applicable provisions of the city's Zoning Ordinance have been met.

### **F. Conditional use approval.**

- (1) Conditional use approval may be granted by the PLANNING BOARD (RSA 674:21II) after proper public notice and public hearing, for construction within the Wetland Protection District or buffer. Said construction may include, but is not limited to a road or other accessway, utility right-of-way, communication lines, power lines and pipelines, STRUCTURES, and parking LOTS provided that the proposed construction complies with the following standards:

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- (a) *Demonstration of Need:* The proposed construction is essential to the productive use of land or water outside the Wetlands Protection District.
  - (b) *Avoidance:* The potential impacts have been avoided to the maximum extent practicable. The APPLICANT will demonstrate by plan and example that the proposed construction represents the least impacting alternative.
  - (c) *Minimization:* Any unavoidable impacts have been minimized. No reasonable Alternative to the proposed construction exists which does not impact a wetland or which has less detrimental impact on a wetland. Design, construction and maintenance methods will be prepared by a registered engineer to minimize detrimental impacts to the wetlands and will include restoration of the site as nearly as possible to its original grade.
  - (d) *Mitigation:* If the APPLICANT is required by State rules to prepare a compensatory mitigation plan, the APPLICANT shall provide the Conservation Commission and Planning Board with one copy each of said plan for their review.
  - (e) Approval for the wetlands impact has been received from the NHDES Wetlands Bureau pursuant to Section G (3), below.
- (2) The burden of proof that the conditions specified in Subsection F (1) and/or (2) above have been met shall be the responsibility of the person(s) requesting the conditional use approval, except as herein provided.
  - (3) The conditional use approval shall apply only to the project specified at the time of approval and shall not be transferable to a different project.
  - (4) If deemed necessary by the PLANNING BOARD, prior to the granting of a conditional use approval, the APPLICANT shall agree to submit a performance security to ensure that all operations are carried out in accordance with an approved design. This security shall be submitted in an amount sufficient to complete all specified work and repair damage to any wetland area in which no work has been authorized. The security shall be submitted in an amount, with surety and conditions satisfactory to the PLANNING BOARD. The security shall be submitted and approved prior to issuance of any permit authorizing construction.
  - (5) The PLANNING BOARD may assess the APPLICANT reasonable fees to cover the costs of special investigative studies and for the review of documents required by applications.

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### **G. Specific provisions.**

#### **(1) Wetland Buffers.**

- (a) *Buffers Established.* Buffers are hereby established around and encircling all wetlands other than those that were created as legally permitted sedimentation/detention basins or roadside drainage ditches. The minimum width of the wetland buffers shall be fifty (50) horizontal distance as measured outward from the perimeter edge of the wetland. Wherever a permit to fill a wetland has been issued by either the New Hampshire Department of Environmental Services (NHDES) or the U.S. Army Corps of Engineers (USACOE), the perimeter of the wetland shall be deemed to be the new edge between the fill as placed in accordance with the permit and the remaining wetland. If there is no remaining wetland, there is no buffer. All other wetland edges shall be determined in accordance with Section D (1) above
- (b) *Natural Conditions to be Maintained within Buffers.* Where wetland buffer disturbance is allowed pursuant to a state or federal permit, or a conditional use permit, restoration of the disturbed area is required. Restoration is defined as filling of ruts or excavated area with similar soils while maintaining original grade. Applications for a City of Dover building permit that includes a temporary disturbance of wetlands buffers, pursuant to Section G (1) (e) (iv) below, shall include a “Wetlands Buffer Encroachment and Restoration Plan.” Said plan shall be submitted, reviewed and approved by Building Inspector, in consultation with City staff, prior to the disturbance. Replanting to restore buffers shall be with native non-invasive species specified in the “Wetlands Buffer Encroachment and Restoration Plan”. Implementation of the plan shall include the clear delineation of the boundaries of wetland buffers in the field using construction tape or other clear marking devise. Mowing to maintain an existing lawn or field within a wetland buffer area is allowed without a permit, as specified in Section G (1)(e), below, provided the roots of the vegetation are not disturbed and the ground is frozen or sufficiently dry to avoid making ruts.
- (c) *Certain Uses Prohibited in Buffers.* The following uses and activities are prohibited within a wetland buffer:
  - (i) The establishment or expansion of salt storage, junk yards, resource recovery facilities, transfer stations, landfills, or solid or hazardous waste facilities;

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- (ii) The BULK storage of chemicals, petroleum products, or toxic and hazardous materials;
  - (iii) The dumping or disposal of snow and ice collected from roadways and parking LOTS;
- (d) *Uses Allowed Only With a Conditional Use Permit.* The following uses and activities are allowed within a wetland buffer only if a conditional use permit is obtained in accordance with Section F above:
- (i) All uses not specifically prohibited in Section G (1) (c) above, or specifically exempted in Section G (1) (e) below.
  - (ii) The erection or construction of a BUILDING or STRUCTURE, excluding FENCES that meet the requirements of 170-33, or the construction of parking LOTS or loading areas.
  - (iii) Timber harvesting, except as conducted in accordance with the terms and provisions of RSA 227-J, Timber Harvesting.
  - (iv) The removal of stumps and roots (grubbing), the recontouring or grading of the land, or the placement of impervious surfaces or creation of storm water detention ponds.
  - (v) The installation of water, sewer, or buried electrical or telecommunications cables.
  - (vi) The installation of water-supply wells.
- (e) *Uses Allowed Without a Conditional Use Permit.* The following uses and activities are allowed within a wetland buffer with the noted conditions:
- (i) Activities within wetlands jurisdictional areas that are allowed without a State of New Hampshire Dredge and Fill Permit, in accordance with NHDES Rules Env-Wt 303.05(a) – repair of an existing legal STRUCTURE; or successor rules.
  - (ii) The removal of vegetation in accordance with NHDES Rules Env-Wt 303.05(b), or successor rules, provided the roots of the vegetation are not disturbed and the ground is frozen or sufficiently dry to avoid making ruts.
  - (iii) The installation of monitoring or test wells completed in accordance with NHDES Rules Env-Wt 303.05(p) or successor rules.

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(iv) Temporary disturbance of the wetland buffer to facilitate construction activities completed under a valid City of Dover BUILDING permit, provided the temporary disturbance is restored in accordance with Section G (1) (b) above.

- (2) No septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any Wetland Protection District. In new subdivisions approved subsequent to adoption of this section, there must be sufficient LOT size to place a house, a state-approved septic system, where applicable, and a state-approved well, where applicable, without locating them in a wetland. This provision can be waived if a conditional use approval is obtained from the PLANNING BOARD.
- (3) A state dredge and fill application shall be submitted for any proposed change to a wetland (RSA 482-A).

### **H. Filled lands and preexisting uses.**

- (1) Lands which may have been wetlands but were filled under properly issued federal, state and local permits granted prior to the adoption of this section will be judged according to the soils and flora existing at the time the application for building permit or subdivision is made.
- (2) STRUCTURES and uses existing at the time of the adoption of this section that do not comply with the rules stated herein shall be regulated in accordance with 170-40 and 170-41 of this Chapter.

### **I. Exemption for one- and two-family residential STRUCTURES, existing LOTS, impoundments and maintenance dredging.**

- (1) Notwithstanding other provisions of this chapter, the construction of additions and/or extensions to one- and two-family dwellings shall be permitted within the Wetlands Protection District or buffer, provided that:
- (a) The dwelling(s) lawfully existed prior to the effective date of this section;
- (b) The proposed construction conforms to all other applicable ordinances and regulations of the City of Dover; and any required State of New Hampshire Dredge and Fill Permit is obtained.
- (c) The design and construction of the proposed use will be done in a manner which minimizes the impacts on the affected wetland, including storage of EXCAVATION and construction material outside the wetland and installation

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of siltation FENCE and/or hay bales to contain erosion of the construction site.

- (2) Notwithstanding other provisions of the ordinance, a new one- or two-family dwelling shall be permitted in the Wetlands Protection District or buffer, on an existing LOT, provided that all of the following conditions are found to exist:
  - (a) The LOT for which an approval/permit is sought was an official LOT of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this amendment was posted and published in the city.
  - (b) The STRUCTURE for which the approval/permit is sought cannot be feasibly built on a portion or portions of the LOT, which are outside the Wetlands Protection District.
  - (c) Due to the provisions of the Wetlands Protection District, no reasonable and economically viable use of the LOT can be made without the exemption.
  - (d) The design and construction of the proposed STRUCTURE will, to the extent practical, be consistent with the purpose and intent of this ordinance.
  - (e) The proposed STRUCTURE will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater or other reason.
  - (f) The design and construction of the proposed STRUCTURE will be done in a manner which minimizes the impacts on the affected wetland, including storage of EXCAVATION and construction material outside the wetland and installation of siltation FENCE and/or hay bales to contain erosion of the construction site.
- (3) Maintenance dredging for navigational purposes (where a dredge spoil site has been approved by the PLANNING BOARD) are exempt from the regulations stated herein. Notwithstanding, copies of permits where required by the New Hampshire Department of Environmental Services and the United States Army Corp. of Engineers shall be submitted to the PLANNING BOARD prior to construction.
- (4) The burden of proof that the conditions specified in Subsection I (1) and/or (2) above have been met shall be the responsibility of the person(s) requesting the approval/permit.

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- J. Separability. Should any provision of this section be declared invalid by a final court decision, the same shall not affect the validity of this section as a whole or part thereof, other than the part declared to be invalid.

**170-27.2. TRANSFER OF DEVELOPMENT RIGHTS.** [Amended on 10-31-90 by Ord. No. 16-90; Amended on 01-22-2003 by Ord.35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 02-22-2012 by Ord. No. 2012.01.25.]

- A. Authority. By the authority granted under RSA 674:21, this section creates overlay district(s) for the purpose of transferring DEVELOPMENT RIGHTS (TDR) within said districts.
- B. Purpose and Intent. Within the City of Dover there are certain lands that possess significant conservation features, including but not limited to wetlands, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic viewsheds, historic landmarks, and linkages to other such areas. Because of their unique assemblages of flora and fauna and their significant contribution to the ecological system and/or the cultural identity of our community, these lands are worthy of special protection. The City of Dover furthermore, has a limited supply of land suitable for development. The purpose of this overriding district is to promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant conservation features that provide unique values in their undisturbed condition.

Additionally, it is recognized that the City of Dover has an Open Lands Committee and Conservation Commission who are active in protecting and preserving OPEN SPACE.

- C. Applicability. Upon request by an APPLICANT for development approval and at the discretion of the PLANNING BOARD, the provisions of this subsection may apply to the district(s) defined in this subsection E below.
- D. Districts Defined.
- (1) The Industrial TDR DISTRICT is hereby determined to be any I-4 or B-4 zoning district as shown on the Zoning Map for the City of Dover, New Hampshire, adopted December 9, 2009. The SENDING AREA is defined to be OPEN SPACE and related SETBACKS as defined by the City of Dover Wetland Protection District, Chapter 170-27.1, which are located in any I-4 or B-4 zoning district. The RECEIVING AREA is defined to be all remaining land in be any I-4 or B-4 zoning district.
- (2) The Residential TDR DISTRICT is hereby determined to be Residential districts noted or displayed on the Zoning Map for the City of Dover, New Hampshire,



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adopted December 9, 2009. The SENDING AREA is defined to be any land preserved by the City of Dover through conservation programs in the R-40 or R-20 residential zoning districts. The RECEIVING AREA is defined to be all non-R-40 or R-20 zoning districts east of the Spaulding Turnpike which allow residential development.

### **E. Procedural Requirements.**

- (1) At the discretion of the PLANNING BOARD, an APPLICANT for development approval within the RECEIVING AREA of the defined Industrial TDR DISTRICT may apply the performance standards specified in subsection G below in return for the acquisition of land or DEVELOPMENT RIGHTS from the SENDING AREA within the same TDR DISTRICT. The performance standards for the Residential TDR DISTRICT are outlined in subsection H below.
- (2) A certified boundary survey of the associated land in the SENDING AREA shall be submitted as a supplement to the site plan or subdivision plan for development within the RECEIVING AREA. For residential application, proof of previous preservation by the City of Dover is required.
- (3) The owner of the subject OPEN SPACE within the SENDING AREA of the TDR DISTRICT shall SIGN all application materials as a co- APPLICANT of the development application. For residential application, proof of an agreement to sell DEVELOPMENT RIGHTS must be provided by the Conservation Commission.
- (4) A sketch plan estimating layout of the development site and identifying the OPEN SPACE associated with the plan shall be submitted to the PLANNING BOARD for review at a regularly scheduled meeting. The PLANNING BOARD, within thirty (30) days of its review of the sketch plan, shall determine if waivers will be granted as allowed in Subsections G and H below. Following this decision, a final application is prepared. The final application for development approval shall be reviewed in accordance with the standard plan review process and subjected to all applicable development regulations, except as provided in this section.
- (5) A perpetual easement or restrictive covenant shall be recorded at the Strafford County Registry of Deeds that preserves the designated OPEN SPACE within the SENDING AREA. Said easement or covenant may allow for the continuance of existing residential and agricultural activities, and may allow for utility and access crossings in accordance with subsection I below. The designation of the land protection agency to hold the easement shall be approved by the PLANNING BOARD.

## ***ZONING***

### **F. Industrial Performance Standards.**

- (1) Land within a SENDING AREA, when surveyed, approved by the PLANNING BOARD and preserved by easement or covenant as specified in subsection F above, may be counted for the OPEN SPACE requirement for a development site in a RECEIVING AREA. The amount of land preserved in a SENDING AREA shall equal or exceed the OPEN SPACE requirement for the development site, but in no case be less than one (1) acre. Notwithstanding, development sites within the I-4 and B-4 zoning districts shall maintain OPEN SPACE or landscaped area on at least ten percent (10%) of the site. The design of the development site shall locate the OPEN SPACE or landscaped area to maximize the aesthetic value of the site.
- (2) The minimum LOT size requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS.
- (3) The minimum FRONTAGE requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS provided that paved access to all developed areas suitable for emergency vehicles is approved by the PLANNING BOARD.
- (4) SETBACKS for parking, paved areas, and BUILDINGS may be waived by the PLANNING BOARD, and be consistent with the intent to promote intensive development of suitable development sites. Notwithstanding, BUILDINGS shall be at least one hundred fifty (150) feet from residential STRUCTURES that exist on the date of enactment of the I-4 and B-4 Zoning districts, and seventy five (75) feet from the LOT LINE of a disagreeing residential ABUTTER.
- (5) The developer shall record covenants that address architectural considerations for STRUCTURES, SIGNAGE and lighting that are designed to promote the highest possible aesthetic quality of the development site.
- (6) A landscaping plan shall be submitted with a development application that depicts landscaping or OPEN SPACE around the perimeter of the site, near the proposed BUILDINGS, and within the parking LOT that promotes the highest possible aesthetic quality of the development.

### **G. Residential Performance Standards.**

- (1) A residential TRANSFER OF DEVELOPMENT RIGHTS APPLICANT may pursue one of the following methods for TRANSFERRING DEVELOPMENT RIGHTS.

## ***DOVER CODE***

- (a) Private land transfer method
  - (i) For land in the sending district to be eligible for a TRANSFER OF DEVELOPMENT RIGHTS, it must be a parcel of at least five (5) acres, and developable under the existing land use regulations.
  - (ii) Land within a sending area, when surveyed, endorsed by the Conservation Commission/Open Lands Committee, approved by the PLANNING BOARD and preserved by easement or covenant as specified in subsection E above, may be counted for the minimum lot size requirement for a development site in a receiving area. The criteria used by Open Lands Committee to rank parcels shall be listed on the application.
- (b) Land bank method
  - (i) For land in the sending district to be eligible for a TRANSFER OF DEVELOPMENT RIGHTS, it must be a parcel or easement purchased by the City through the use of Conservation funds allocated and approved by the City Council.
  - (ii) Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve open space within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development, and coordinated with the Conservation Commission.
  - (iii) Proceeds from the purchase of development rights, shall be placed into the Conservation Fund to be used to purchase future property or easements, and not into the general fund.
- (2) Regardless of the method utilized, the transfer shall equate to one (1) unit per acre preserved. If the end result is a village themed residential/commercial project, the transfer shall equate to one (1) unit per tenth (10th) of an acre preserved. A minimum of three (3) acres shall be purchased.
- (3) Regardless of the method utilized, the minimum lot size requirement may be waived by the Planning Board for land subjected to the transfer of development rights.
- (4) Regardless of the method utilized, the minimum frontage requirement may be waived by the PLANNING BOARD for land subjected to the transfer of development rights provided that paved access to all developed areas suitable for emergency vehicles is approved by the PLANNING BOARD.

## ***ZONING***

(5) Regardless of the method utilized, any other provision in this chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity:

(a) Is consistent with the Master Plan

(b) Is not incompatible with the land uses on neighboring LOTS

### **H. Conditional Uses.**

(1) The PLANNING BOARD may grant conditional use permits to allow streets, roads, utilities, or other infrastructure improvements to cross wetlands within the RECEIVING AREA of the TDR DISTRICT, provided said infrastructure is essential to the productive use of land within the RECEIVING AREA of a TDR DISTRICT, and further provided that no possible location exists for said infrastructure in non-wetland areas.

### **170-28. Urban Renewal District.**

The regulatory provisions contained in the so-called "Land Use Provisions and Building Requirements" for the Downtown Dover Urban Renewal Project No.1 shall apply to the project area, as approved by the Dover City Council.

#### **170-28.1. Riverfront Residential Overlay District.** [Amended on 02-17-99 by Ord. No. 25-98.]

- A. Purpose. The purpose of this section is to promote the public health, safety and general welfare by protecting the shorelands which are valuable and fragile natural resources essential to maintain the integrity of public waters. By adopting this section, the City is striving to avoid uncoordinated, unplanned and piecemeal development of shorelands which could significantly impact public waters.
- B. Location of District. The Riverfront Residential Overlay District is an overlay district that includes all land located within two hundred and fifty (250) feet of the reference line (as defined by RSA 483-B:4 – XVII) of any tidal water body or tidal river in a Single Family Residential District (R-12, R-20, and R-40).
- C. Minimum LOT Size Requirement. The minimum LOT size for a LOT within the Riverfront Residential Overlay District shall be three times the minimum LOT size required by Section 170-12 – Applicability of Table of Dimensional Regulations for the underlying zoning district, but land classified as wetlands can be included for up to fifty percent (50%) of the minimum LOT area required in this district.

## ***DOVER CODE***

- D. Minimum Shoreland FRONTAGE Requirement. Any new LOT created within the district shall provide a minimum of one hundred fifty (150) feet of river shoreland FRONTAGE per DWELLING UNIT for LOTS dependent on septic systems and a minimum of one hundred (100) feet of river shoreland FRONTAGE per DWELLING UNIT for LOTS served by municipal sewer.
- E. Existing LOTS. Existing LOTS of record are exempt from the provisions of this Chapter. Only LOTS subdivided after the posting of this Chapter shall be subject to its provisions.
- F. Other Provisions. Reference is hereby made to RSA 483-B, , the Comprehensive Shoreland Protection Act, the provisions of which apply. It is intended that the more restrictive law shall apply. In all cases where the Riverfront Residential Overlay District is overlain other local zoning districts, the more restrictive regulations shall apply.

**170-28.2 Residential-Commercial Mixed Use (RCM) Overlay District.** [Amended on 01-22-2003 by Ord.35-02; Amended on 05-17-2006 by Ord. No. 03-06; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 02-22-2012 by Ord. No. 2012.01.25; Amended on 11-28-2012 by Ord. No. 2012.11.14-24; Amended on 09-13-2013 by Ord. No. 2013.08.14-12.]

]

### **A. Purpose and Intent**

The Residential-Commercial Mixed Use Overlay District is designed as an overlay district that allows a mixture of residential use and commercial uses on one parcel. In order for a developer to utilize these regulations, the PLANNING BOARD shall have granted a Conditional Use permit. The district includes options which enable and encourage greater flexibility in the design of residential housing for older persons with commercial projects. The overlay permits development of large tracts of land on a Development Plan basis which allows flexibility in internal road design, with reduced dwelling LOT sizes and modified dimensional requirements.

The mixed residential and commercial uses are intended to be complementary of one another and to create a sense of community between the mixed uses. Housing and commercial uses can be developed to provide appropriate use of land, facilitate the economical and efficient provision of public services, promote OPEN SPACE conservation, protect the natural and scenic attributes of the land, and expand opportunities for the development of housing for older persons, as defined under RSA 354-A:15, outside the traditional residential developments.

## ***ZONING***

### **B. Conditional Use Permit**

- (1) Conditional use approval may be granted by the PLANNING BOARD (RSA 674:21 II) after proper public notice and public hearing provided that the proposed project complies with the following standards:
  - (a) The APPLICANT demonstrates that the development complies with the design guidelines that are outlined in Chapter 149 14.2, Site Review Regulations. These guidelines encourage a context sensitive development, which encourages components that act as one project and not as two adjacent projects
  - (b) The APPLICANT demonstrates that the development poses no detrimental effects on surrounding properties. Potential areas of impact that need to be analyzed include, but are not limited to, vehicular traffic, noise, property value, visual blight, natural resources degradation, light pollution, and offensive emissions such as dust, odor, or smoke.
  - (c) The APPLICANT shall submit a Fiscal Impact Analysis as defined in Chapter 155.22.C (1) (b) Subdivision of Land. The Analysis shall demonstrate that the project is at least a cost neutral project for the City at present and ten years from the occupation.
- (2) Conditional use approval shall be subject to a formal agreement between the PLANNING BOARD and the APPLICANT. Said agreement shall be recorded at the Strafford County Registry of Deeds.

### **C. Location**

The Residential-Commercial Mixed Use Overlay District shall include any parcel located within the B-4, I-4 or ETP zone, which is greater than fifty (50) acres, and within five hundred (500) feet of a road maintained by the State of New Hampshire.

### **D. Permitted Uses**

The following uses are permitted:

#### **(1) Principal Uses**

- (a) Housing for older persons as that term is defined under RSA 354-A:15 and 42 USCA §3607(b)(2) and the regulations adopted there under in the following settings:

## ***DOVER CODE***

### **(i) SINGLE-FAMILY DWELLING**

#### **a. Including the use of MANUFACTURED HOUSING**

### **(i) Two-family dwelling**

### **(ii) Three to Four family dwelling**

### **(iii) MULTI-FAMILY DWELLING**

### **(iv) MANUFACTURED HOUSING PARKS (permitted outright without a special exception)**

### **(b) Public and private utilities**

### **(c) Non-Residential uses as allowed as follows:**

#### **(i) Any use allowed in the underlying zone that is compatible with housing for older persons**

#### **(ii) Barber or Beauty Shop**

#### **(iii) Bank**

#### **(iv) Eating/Drinking Establishments (no Drive thru Service)**

#### **(v) BED AND BREAKFAST**

#### **(vi) Office**

#### **(vii) Retail store**

#### **(viii) Theater**

#### **(ix) ADULT DAY CARE**

#### **(x) NURSING HOMES (In areas not serviced by City water and sewer utilities at a density of one bedroom per ten thousand (10,000) square feet of land; in areas serviced by City water and sewer utilities at a density of one bedroom per seventy-five hundred (7,500) square feet of land)**

#### **(xi) CONGREGATE CARE FACILITIES (In areas not serviced by City water and sewer utilities at a density of one unit per ten thousand**

## ***ZONING***

(10,000) square feet of land; in areas serviced by City water and sewer utilities at a density of one unit per seventy-five hundred (7,500) square feet of land)

(xii) Other uses compatible with housing for older persons

(xiii) Non-residential uses in existence at the adoption of this ordinance on adjacent parcels shall be allowed to expand within the development if conceptually shown on the approved plan.

### **(2) ACCESSORY USES**

(a) Recreational facilities

(b) Community BUILDING

(i) Defined as “A BUILDING used as a place of meeting, recreation or social activity typically for use by the residents of a particular development”.

(c) Maintenance BUILDINGS

(d) Rental and sales offices

### **E. Procedural Concepts**

The developer shall prepare a Development Plan, which locates the proposed types of non-residential and residential development, utilities, access roads, and public ways. The parcels comprising the development may be under separate ownership, but shall be treated as one development and shall be bound by the approval granted for the entire Development Plan. If approval is granted, individual LOTS must be developed as part of the larger Development Plan and phasing outlined below, and not separately. The Development Plan must identify the percentage of the non-residential uses, residential uses and OPEN SPACE. Non-residential and/or mixed use uses must comprise at least fifty-five percent (55%) of the total proposed FLOOR AREA for the development (outdoor display areas may be counted towards the minimum required FLOOR AREA); residential uses must not exceed forty-five percent (45%) of the total proposed FLOOR AREA for the development. A building shall be considered “mixed use” provided that at least 50% of the FLOOR AREA of the first floor is reserved as commercial space and provided that such commercial space is located roughly in the front half of the building and extends the length of the building façade. Residential accessory uses (e.g. mechanical, storage, laundry, etc.) are permitted to be located within the back half of the first floor of any mixed use building.



## ***DOVER CODE***

A minimum of twenty percent (20%) of the area of the original tract shall be reserved as OPEN SPACE and identified as such on the Development Plan. Fifty percent (50%) of the required OPEN SPACE (as defined in Chapter 155-60) must be usable uplands and reasonably accessible to all property owners in the project. Any OPEN SPACE provided above twenty percent (20%) may be mixed wetlands and upland.

Residential uses require that the calculation of permitted density shall be completed through the submission of a yield plan (as defined in Chapter 155-60, Subdivision of Land) applied to the Development LOT and not individually to the Internal Dwelling LOTS.

For residential development that includes two (2) family, three (3) to four (4) family or MULTI-FAMILY DWELLINGS, density shall be based upon calculating one (1) unit per forty thousand (40,000) square feet of CONTIGUOUS upland, and using one hundred fifty (150) feet of FRONTAGE on a public roadway.

For single family residential development, density shall be based upon calculating one unit per ten thousand (10,000) square feet of CONTIGUOUS upland, and using one hundred (100) feet of FRONTAGE on public a roadway.

The Development Plan may be phased for a term of five (5) years. The phasing plan shall contain provisions which promote the mixed use of the site consistent with Section 170-28.2.A. For the purposes of this section, development shall include:

- (1) construction of STRUCTURES;
- (2) environmental remediation;
- (3) site preparation or demolition;
- (4) roadway utility or recreation and common area design and construction; and
- (5) bonding or other security for site development.

The phasing plan shall provide that no more than fifty percent (50%) of the residential development may be occupied prior to completion of between twenty-five percent (25%) and fifty percent (50%) of the non-residential STRUCTURES as negotiated between the PLANNING BOARD and the Developer.

Provided that the developer is making reasonable efforts to develop the site, the PLANNING BOARD may extend the initial five-year phasing period provided a request for extension is submitted before the expiration of the initial five (5) year phasing term.

## ***ZONING***

### **(1) Residential Development Plan Guidelines**

The developer shall be permitted to allocate permitted density among Internal Dwelling LOTS in a flexible and creative manner. The sum total of the permitted density shall not exceed the permitted density of the Development LOT or Legal LOT. Layouts may include individual LOTS or a cluster of units without LOT LINES.

Dwelling layouts shall be so designed that parking is screened from external roadways by garages, BUILDING locations, grading or screening. Major topographical changes or removal of existing trees shall be avoided wherever possible, and water, wetlands, and other scenic views from the external streets shall be preserved as much as possible.

Where possible, it is desirable and encouraged to mix residential and non-residential uses. This may be achieved through situating the BUILDINGS close to each other, or through allowing STRUCTURES to house residential – preferably on the second or above floor, with non-residential on the first floor. Creativity and flexibility is encouraged and the development plan may offer another option for mixing uses. Units created through the TDR program are not required to be housing for the elderly, that term is defined under RSA 354-A:15 and 42 USCA §3607(b)(2).

All residential development must adhere to architectural design guidelines. Said standards will reflect a New England village motif and include STRUCTURES with peaked roofs, and architectural shingles. The guidelines for this development are included in Chapter 149, section 14.2, Site Review Regulations.

All MANUFACTURED HOUSES shall adhere to the standards outlined in Chapter 126, MANUFACTURED HOUSE PARKS, with the exception of Sections 126-3, 126-4, 126-5, 126-6, and 126-7.H which shall be controlled by the provisions hereof and unless noted below. Where there is a difference in the requirements between this Overlay District and the provisions of Chapter 126, “MANUFACTURED HOUSE PARKS”, the provisions of the Overlay District shall apply.

### **(2) Nonresidential Development Plan Guidelines**

The general character of the nonresidential STRUCTURES within the development LOT is intended to be a pedestrian friendly setting, with emphasis on the natural characteristics of the site. The site design should create a sense of character and cohesiveness through landscaping, façade treatment, and SIGNAGE.

## ***DOVER CODE***

The guidelines for this development are included in Chapter 149, section 14.2, Site Review Regulations.

### **F. Standards and Regulations**

#### **(1) Internal Roads**

As part of the approval of the Conditional Use permit, the PLANNING BOARD shall determine whether internal roads shall be public or private. If a road is determined to be private, no municipal services shall be provided other than public safety, utilities maintenance, and regulatory services. Unless noted below roadways shall conform to the STREET design criteria laid out in the Code:

##### **(a) Minimum Internal R.O.W.**

- |                                |         |
|--------------------------------|---------|
| (i) Maximum residential:       | 35 feet |
| (ii) Maximum non- residential: | 50 feet |

##### **(b) Minimum Pavement Width**

- |   |         |
|---|---------|
| (i) Minimum residential:                      | 20 feet |
| (ii) Minimum non- residential:                | 28 feet |
| (iii) Minimum SIDEWALK pavement width:        | 5 feet  |
| (iv) Minimum bike/Segway/golfcart path width: | 5 feet  |

(c) Minimum Tangent Length at Intersections = 75 feet

(d) Maximum STREET angle at Intersections = 60 degrees

(e) Minimum centerline radius = 100 feet

(f) Minimum Tangent Length between reverse curves = 50 feet

#### **(2) Dimensional Requirements**

##### **(a) Non-residential/Mixed-Use BUILDINGS**

- |  |         |
|--|---------|
| (i) Minimum STRUCTURE SETBACK from<br>external LOT LINE: | 50 feet |
|--|---------|

## ***ZONING***

- a. Expanding existing non-residential uses are not held to this SETBACK.

- (i) Minimum STRUCTURE SETBACK from external

- ROW: 50 feet

- (ii) Maximum non-residential BUILDING HEIGHT: 55 feet

- (iii) For all other dimensional requirements for non-residential STRUCTURES and parking SETBACKS refer to the

- (iv) underlying zone.

- (b) Residential Dwellings:

- (i) Minimum STRUCTURE and parking SETBACK

- from external LOT LINE: 50 feet

- (ii) Minimum STRUCTURE and parking SETBACK

- from external ROW: 100 feet

- (iii) Maximum residential BUILDING HEIGHT: 35 feet

- (iv) Minimum FRONTAGE on internal road: 40 feet

- (v) Minimum SETBACKS:

- a. FRONT YARD SETBACKS: 20 feet

- b. Distance between BUILDINGS: 24 feet

- (3) Parking

- (a) All DWELLING UNITS shall require two independently accessible PARKING SPACES per unit, except that the CONGREGATE CARE and NURSING HOME requirements shall be as otherwise defined by the zoning Chapter. Non-residential uses shall comply with parking requirements defined by the zoning Chapter.

Overnight parking shall not be permitted on internal roadways.

**170-28.3. Groundwater Protection.** [Amended on 6-12-85 by Ord. No. 7-85; Amended on 1-30-88 by Ord. No. 24-88; Amended on 02-17-99 by Ord. No. 25-98; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

## ***DOVER CODE***

- A. Purpose. The purpose of this section is to promote the public health, safety and general welfare by protecting and preserving the quality of existing and future groundwater supplies from adverse or detrimental land use, development or activities.
- B. Location. These regulations shall apply to all lands within the Primary and Secondary Groundwater Protection Zones. The boundaries of the Primary and Secondary Groundwater Protection Zones are depicted on maps entitled "Groundwater Protection Zones," dated October 6, 1998. These maps shall be on file at the Planning Department and the City Clerk's Office.

### **C. Applicability.**

- (1) All land use activities and development conducted within the Primary or Secondary Groundwater Protection Zones shall be regulated by the standards established herein.
- (2) The standards established herein shall constitute the rules of an overlay zone and shall be superimposed over other zoning districts or portions thereof. The provisions herein shall apply in addition to all other applicable ordinances and regulations. In the event of a conflict between any provision herein and any other ordinance or regulation, the more restrictive requirement shall control.
- (3) Pursuant to New Hampshire Code of Administration Rules Env-Ws 421, land use activities within a four-hundred-foot radius of a municipal well, the Primary Groundwater Protection Zone, shall be subjected to more restrictive standards than the balance of the Groundwater Protection Zones.
- (4) Any NONCONFORMING USE may continue, and may be maintained and repaired, unless such use is determined to be an imminent hazard to public health and safety by the City Council or the Health Officer.

### **D. Standards and regulations.**

- (1) The following land uses are allowed in the Primary Groundwater Protection Zones. All other land uses are prohibited:
  - (a) Construction, operation, and maintenance of wells, dams and water conservation apparatus.
  - (b) Conservation, education and recreational activities which do not cause erosion or necessitate the application of chemicals.

## ***ZONING***

- (c) Forestry and agricultural uses, provided that fertilizers, herbicides, pesticides, manure and other leachables are not used or stored within said zone.
  - (d) Maintenance and repair of any existing STRUCTURE, provided that there is no increase in the area of impermeable surfaces.
- (2) The following land uses are expressly prohibited from the Secondary Groundwater Protection Zones:
- (a) Disposal or storage of solid waste that contains leachable toxic substances, except for temporary storage awaiting removal, provided that it is stored in a manner that avoids leaching and runoff.
  - (b) Disposal or storage of liquid waste, except for normal sanitary waste disposal from a domestic septic system approved in compliance with New Hampshire Department of Environmental Services (NHDES) Regulations, which may require a groundwater discharge permit under RSA 485-A:13. Land application of wastewater residuals (sewage sludge) subject to regulation under NHDES Rules Env 800-811 is prohibited.
  - (c) All on-site handling, disposal, storage or recycling of solid or liquid waste and hazardous or toxic materials, as defined in RSA 174A, except for the temporary storage of such materials when they are incidental to or byproducts of a manufacturing process. Such materials are to be stored and removed in accordance with Chapter 149, Site Review Regulations, and other applicable state and federal regulations.
  - (d) JUNKYARD- or salvage yard.
  - (e) Motor vehicle service or repair shops, except as a customary ACCESSORY USE designed to provide routine service to the vehicles operated by the principal use.
  - (f) Storage of petroleum or related products, exempting such products when they are a part of Subsection D (2) (c) or (e) above and exempting normal heating oil. Notwithstanding, the facilities for storing and handling such products shall be designed to avoid groundwater contamination and shall be proposed for review and approval prior to construction.
  - (g) Storage of road salt and other deicers, except in a shelter constructed to avoid leaching and runoff for use on-site.
  - (h) The dumping of snow containing road salt or other deicers brought in from outside the Groundwater Protection Zone.

## ***DOVER CODE***

- (i) Industrial uses that discharge contaminated wastewater on-site.
  - (j) Animal feedlots.
  - (k) Commercial storage of manure, fertilizers, herbicides, pesticides or other leachables, except for the temporary storage of such material when it is incidental to the principal use and stored in a manner that avoids leaching and runoff.
  - (l) The use of wood piling treated with creosote or other preservative.
- (3) The following land uses are allowed in the Secondary Groundwater Protection Zones only if the PLANNING BOARD approves a Conditional Use Permit for the specific use per Chapter 170-28.E (4):
- (a) General service and repair shops, including but not limited to: furniture stripping, painting, and refinishing; photographic processing; printing; appliance and small engine repair; boat repair, service and refinishing; refrigeration, heating, ventilating and air conditioning shops.
  - (b) Metalworking shops, including, but not limited to: machine shops; metal plating shops; heat treating shops; smelting shops; and jewelry making shops.
  - (c) Manufacturing facilities, including but not limited to: electronics and chemical manufacturing, processing, and RECLAMATION; paper, leather, plastic, fiberglass, rubber, silicon and glass making; pharmaceutical production; pesticide manufacturing; and chemical preservation of wood and wood products.
  - (d) Laboratories and professional medical offices, including but not limited to: medical, dental, and veterinary offices; and research and analytical laboratories
  - (e) Cleaning services, including but not limited to: dry cleaner; laundromats; beauty salons; and car washes.
- (4) The following land uses are allowed in the Secondary Groundwater Protection Zones:
- (a) Construction, operation and maintenance of wells, dams, and water conservation apparatus
  - (b) Conservation, education and recreational activities which do not cause erosion or necessitate the application of chemicals.

## ***ZONING***

- (c) Forestry and agricultural uses, provided that fertilizers, herbicides, pesticides, manure and other leachables are not commercially stored within said zone.
- (d) All land use permitted in the applicable underlying zoning district, provided that they are not expressly prohibited in Subsection D (2) or (3) above.
- (5) In soils that are excessively drained, well-drained, moderately well-drained or somewhat poorly drained, as defined by a site specific soil survey completed in accordance with the standards of the Society of Soil Scientists of Northern New England, the development shall not make impervious to water more than twenty percent (20%) of the area of said soils except as provided for below. Any development in the Secondary Groundwater Protection Zone that proposes a total impervious surface greater than twenty percent (20%) shall only be permitted if the PLANNING BOARD grants a Conditional Use Permit, per Chapter 170-28.E (4). In reviewing a Conditional Use Permit application filed under this provision, the PLANNING BOARD shall require that the proposed development plan incorporates a stormwater drainage plan, approved by the PLANNING BOARD and prepared by a professional engineer certified to practice in the State of New Hampshire. The plan shall provide for the retention and percolation within the Secondary Groundwater Protection Zone of all development-generated stormwater runoff from a ten (10) year storm. Furthermore, the stormwater drainage plan shall provide for the removal of oil and gasoline from parking LOT runoff by use of treatment swales, oil/gas separators or other device, prior to retention and percolation of the runoff.
- (6) In addition to standards and requirements contained in other ordinances and regulations, a proposed site plan and building permit application shall be accompanied by a report that specifies the amount and composition of industrial or commercial waste that will be generated on-site and details the proposed method for disposal of such waste outside of the Groundwater Protection Zones.
- (7) A hydrogeologic study may be required by the PLANNING BOARD to investigate the impacts a proposed development or land use activity will have on an existing or future groundwater supply. A qualified professional hydrologist or geologist shall be chosen from a list of such professionals provided by the City of Dover, and the APPLICANT shall pay any costs incurred.

### **E. Administration.**



## ***DOVER CODE***

- (1) Development or land use activities proposed within the Groundwater Protection Zones that require subdivision or site plan approval from the PLANNING BOARD also shall be reviewed by the Dover Conservation Commission. The PLANNING BOARD and Conservation Commission shall verify that the proposed activity will comply with this chapter before the PLANNING BOARD grants approval.
- (2) The Building Inspector shall not issue a building permit for development or land use activities until such time as he verifies with the Zoning Administrator that the proposed development will comply with the provisions and standards established herein. The Building Inspector may consult with the Conservation Commission or Planning Department as he deems necessary.
- (3) Land use activities that do not require PLANNING BOARD approval or building permits are also subject to the requirements and standards established herein.
- (4) Conditional use permits. The PLANNING BOARD, after receiving a recommendation from the Conservation Commission, may vary the provisions herein by granting a conditional use permit in accordance with RSA 674:21. Along with the conditional use permit application, the APPLICANT shall submit expert technical information from a professional engineer, hydrologist or geologist that documents that the requested relief is consistent with the stated purpose and intent of this chapter. Such technical information shall include an environmental protection plan consistent with the regulated substance management requirements of the NHDES's, "Best Management Practices for Groundwater Source Protection" (Env-Ws 421). Said plan shall also include provisions for routine monitoring and reporting of environmental protection activities to be reported to the City of Dover. Any cost incurred by the city in reviewing the groundwater protection information shall be paid by the APPLICANT for the conditional use application.

### **F. Performance Standards**

- (1) Applicability. Within the Primary and Secondary Groundwater Protection Zones, the following performance standards shall apply to
  - (a) all new non-residential and multi-family development,
  - (b) Expansion of pre-existing non-residential and multi-family developments that expands the LOT coverage of the existing STRUCTURE(s) by more than twenty percent (20%), and
  - (c) all subdivisions of four or more new LOTS:

## ***ZONING***

- (i) Post-development infiltration volumes shall be no greater than pre-development volumes as determined by use of the Development Review Model described in Section G, below.
  - (ii) Stormwater shall be treated by use of a stormwater treatment system designed to remove no less than eighty percent (80%) of the annual load of total suspended solids. The removal rate shall be accomplished using best management practices installed in advance of the final infiltration system.
  - (iii) No stormwater infiltration system shall be located within the two hundred (200) day travel time of an existing or proposed municipal well as depicted on the map referenced in Section 170-28.3.B, above. In absence of a defined two hundred (200) day travel time radius, the APPLICANT shall submit a technical evaluation from a professional engineer, hydrologist or geologist that documents that the proposed discharge is consistent with the stated purpose and intent of this requirement.
- (2) Specific Requirements. Within the Primary and Secondary Groundwater Protection Zones, the following performance standards shall apply to specific activities which may impact the groundwater quality:
- (a) Sand and gravel extraction operations shall not excavate below an elevation four (4) feet above the seasonal high water table observed when the associated water supply well has not been operating for at least two (2) weeks prior to the date of measurement. The operator of the sand and gravel extraction operation shall prepare for the City an annual report documenting compliance with the requirements of this section. Pursuant to RSA 155-E:11, II the requirements of this section may be waived if the APPLICANT demonstrates that such EXCAVATION will not adversely affect water quality and that written notice of such exception shall be recorded in the Registry of Deeds, and one copy filed with the NH Department of Environmental Services.
  - (b) Pursuant to Chapter 109-27, Fire Prevention and Life Safety, and RSA 146-E:4, on-premise use heating oil tank facilities shall comply with the provisions of the National Fire Protection Association Standard NFPA 31, "Installation of Oil-Burning Equipment".

### **G. Development Review**

All developments to which Section F Performance Standards, above, applies shall complete the calculations as specified in the Development Review Model, or a performance equivalent, incorporated herein by reference. A copy of this model shall

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be on file at the Planning Department and the City Clerk's Office. The Building Inspector shall withhold a BUILDING permit until such time as he/she verifies that the proposed development will comply with the infiltration and nitrogen maximums set forth in Table 1, Sections A and B of said Development Review Model.

### **170-28.4 Scenic Road Overlay District.** [Amended on 01-22-2003 by Ord. No. 35-02.]

- A. Purpose. The purpose of this section is to promote the protection of natural woodlands located adjacent to the public right-of-ways of scenic roads as designated by the Dover City Council per the authority granted by Chapter 143, Scenic Roads. By adopting this section, the City is striving to maintain the scenic qualities of scenic roads both within the public right-of-way and in the privately-owned land adjacent to the scenic roads.
- B. Location of District. The Scenic Road Overlay District is an overlay district that includes all land located within twenty-five (25) feet of the right-of-way of a scenic road, as designated by the City Council. At present the following roads have been designated as scenic roads: Old Garrison Road, David Tuttle Road and Rochester Neck Road.
- C. Buffer Requirements. Within the Scenic Road Overlay District, the natural vegetative buffer, existing at the time of the adoption of this section, shall be maintained and preserved in its natural state, except as provided below:
  - (1) The removal of damaged, diseased or unsafe vegetation is permitted within the overlay district upon the approval of the City Arborist.
  - (2) The clearing of vegetation necessary for the construction of a driveway for access to a LOT is permitted. Such driveway shall be designed to minimize the amount of clearing of vegetation necessary.
  - (3) The clearing of vegetation for agricultural uses, as defined by RSA 21:34 is permitted.
- D. Compliance with Other Requirements. Nothing in this section shall relieve the property owner from complying with the provisions of, Chapter 143, Scenic Roads.

### **170-28.5. Hazardous Waste Landfill District I.** [Amended on 5-13-87 by Ord. No. 9-87.]

- A. Purpose. In the interest of responsible planning, public safety and concern for the general welfare of the citizens of Dover, the regulations of this district are designed to alert the public and prohibit development activities in areas potentially affected by the

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storage of hazardous waste until such time as a final cleanup and proper closure of the site can be completed.

- B. Location. The Hazardous Waste Landfill District I is hereby to consist of those City owned lots shown on the City of Dover's Assessor's Map C, Lot Nos. 16, 18 and 24.
- C. Hazardous Waste Landfill District I criteria. All applications for further development, residential or commercial or industrial, in areas heretofore specified must contain a notation on the PLAT, site plan and application stating that the development site is within the Hazardous Waste Landfill District.

## **ARTICLE VIII**

### **EXTRACTION INDUSTRIES**

[Amended on 6-10-87 by Ord. No. 13-87; Amended on 09-17-2003 by Ord. No. 18-03.]

#### **170-29. Authority.**

RSA 155-E stipulates that, with some exceptions, all EARTH EXCAVATIONS in the State are subject to regulation from the local municipality in which the operation occurs. Pursuant to the authority vested in the PLANNING BOARD by the Code and RSA 155-E, the City adopts the following regulations to govern the EXCAVATION of EARTH materials in the City of Dover.

#### **170-29.1. Purpose and Intent.**

The goals of this regulation are to: provide for reasonable opportunities for EXCAVATION; minimize safety hazards which can be created by open EXCAVATIONS; ensure that the public health and welfare will be safeguarded; protect natural resources and the environment; and maintain the aesthetic features of the City. For the purpose of achieving these goals, no EARTH materials in the City shall be removed except in conformance with these regulations.

#### **170-29.2. Reserved.**

#### **170-29.3. Applicability.**

##### **A. Projects Requiring a Permit**

- (1) Those that commenced operations since August 24, 1979 without first obtaining a permit, unless specifically exempted by Section 170-29.3.B below.

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- (2) Any EXCAVATION proposing to begin operation after the effective date of these regulations.
- (3) Those that have lawfully operated prior to August 24, 1979 and wish to expand the EXCAVATION AREA.
- (4) Those EXCAVATIONS from an area that on August 4, 1989 was CONTIGUOUS to or was CONTIGUOUS land in common ownership with stationary manufacturing and processing plants that were in operation as of August 24, 1979 and wish to expand.

### **B. Projects Exempt From a Permit**

- (1) The following projects do not require a permit, but are nevertheless subject to Sections 170-29.7, 170-29.8, and 170-29.9. In the event of a question regarding compliance, the PLANNING BOARD may require the owner/operator to come before the PLANNING BOARD and submit such information as may be necessary to demonstrate compliance with said standards.
  - (a) EXISTING EXCAVATIONS that lawfully existed as of August 24, 1979 from which EARTH materials of sufficient weight and volume to be commercially useful has been removed during the two (2) year period before August 24, 1979, provided that:
    - (i) At the time operation began it was in compliance with any local ordinances that may have been in effect;
    - (ii) The owner or operator of such an EXCAVATION AREA shall have filed an EXCAVATION report per RSA 155-E: I (d) with the PLANNING BOARD no later than August 4, 1991. Any EXISTING EXCAVATION that failed to file this report shall no longer be considered to be grandfathered and must obtain a permit from the PLANNING BOARD before continuing EXCAVATION of the site.
- (2) The following projects do not require a permit, but are nevertheless subject to Sections 170-29.7, 170-29.8, and 170-29.9 of these regulations. Compliance with these standards is mandatory in order to retain the non-permit status. Loss of such non-permit status can occur only after the PLANNING BOARD has given written notice that the EXCAVATION is not in compliance and the owner has failed to bring it into compliance within thirty (30) days of receipt of such notice.
  - (a) EXCAVATIONS from a site that on August 4, 1989 was CONTIGUOUS to or was CONTIGUOUS land in common ownership with stationary

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manufacturing and processing plants which were in operation as of August 24, 1979 and which use EARTH obtained from such EXCAVATION SITE.

- (b) EXCAVATIONS from a site that on August 4, 1989 was CONTIGUOUS to, or was CONTIGUOUS land in common ownership with stationary manufacturing and processing plants for which local or state permits have been granted since August 24, 1979 and before August 4, 1989, which used EARTH obtained from such site.
  - (c) An EXCAVATION performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway. A copy of the pit agreement executed between the pit owner, the agent, and the governmental unit shall be filed with the PLANNING BOARD prior to the start of EXCAVATION. In addition, the provisions of Section 170-29.5 of this Chapter and the provisions of RSA 155-E:2, IV, (b) and (c) shall be complied with.
- (3) The following projects are exempt from a permit and are not subject to regulation by the PLANNING BOARD:
- (a) EXCAVATION that is exclusively incidental to the lawful construction or ALTERATIONS of a BUILDING or STRUCTURE, a parking LOT or way including a driveway on a portion of the premises where removal occurs. This EXCAVATION cannot be started, however, until all required state and local permits have been issued.
  - (b) EXCAVATION that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment. In the event of questions, the Zoning Administrator shall determine what is incidental in accordance with RSA 21:34-a.
  - (c) EXCAVATION from a granite quarry for the purpose of producing DIMENSION STONE, if such EXCAVATION requires a permit under RSA 12-E (Mining and RECLAMATION).
- (4) A person owning land abutting a site that was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile EARTH taken from the construction site and may remove the EARTH at a later date after written notification to the City Engineer and Zoning Administrator.

### **170-29.4. Abandoned EXCAVATIONS.**

- A. Any EXCAVATION, except for those associated with STATIONARY MANUFACTURING PLANTS, whether subject to a permit under these regulations

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or not, for which the affected area has not yet been brought into complete compliance with the RECLAMATION standards of this regulation shall be considered abandoned if:

- (1) No material of sufficient weight or volume to be commercially useful has been removed from the site during any two (2) year period either before, on, or after August 4, 1989. The time period may be extended if, prior to the end of the time period, the PLANNING BOARD approves a RECLAMATION timetable, and a bond or other surety is posted in a form and amount prescribed by the City Engineer sufficient to cover the costs of reclaiming the entire site, however, in no case shall the incremental bond amount be less than two thousand five hundred dollars (\$2,500.00)/acre.
- (2) The EXCAVATION SITE is in use and is not an EXCAVATION associated with STATIONARY MANUFACTURING PLANTS, but either has not been brought into compliance with the incremental RECLAMATION standards of this regulation, or a bond has not been posted and the PLANNING BOARD has not approved a RECLAMATION timetable.
- (3) The owner or operator of the EXCAVATION has neither secured a permit pursuant to these regulations nor filed an EXCAVATION report with the PLANNING BOARD within the prescribed period.

- B. In the event the Zoning Administrator determines that any abandoned EXCAVATION presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing, to comply with the timetable and bonding requirements outlined above, or to complete RECLAMATION within a reasonable period of time. Should RECLAMATION not be completed, the PLANNING BOARD may request the City to authorize RECLAMATION at the City's expense. The City's costs shall constitute an ASSESSMENT against the owner, and shall create a lien against the property on which the EXCAVATION is located. Such ASSESSMENT and lien may be enforced and collected in the same manner as provided for real estate taxes.
- C. The provisions of 170-29.4.B above also apply to any EXCAVATION that ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the RECLAMATION standards, if the Zoning Administrator determines in writing that specified RECLAMATION measures are necessary to eliminate or mitigate an identified hazard to public health or safety.

### **170-29.5. Prohibited Projects.**

The PLANNING BOARD shall not grant a permit:

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- A. Where the project cannot comply with the requirements of Sections 170-29.7, 170-29.8 and 170-29.9.
- B. For EXCAVATIONS within fifty (50) feet of the boundary of a disapproving ABUTTER or within ten (10) feet of an approving ABUTTER unless approval is requested by said ABUTTER.
- C. Where the EXCAVATION is not permitted by zoning or other applicable ordinances, provided, however, that reasonable opportunities for EXCAVATION exist in the City, as described in RSA 155-E: 4, III.
- D. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Board shall give particular consideration to such factors as noise, traffic, dust, fumes, or danger from operation.
- E. Where existing visual barriers would be removed, except to provide access to the EXCAVATION.
- F. Where the EXCAVATION would substantially damage a known aquifer, as designated by the United States Geological Survey.
- G. When the EXCAVATION cannot receive required necessary approvals from state or federal agencies, such as Alterations of Terrain or Wetlands permits.

### **170-29.6. Criteria For Non-conforming EXPANSIONS.**

- A. EXPANSION of EXISTING EXCAVATIONS located in an area in which EXCAVATIONS are no longer permitted by zoning that was in effect on August 4, 1989 may be restricted or modified with conditions by the PLANNING BOARD, if after notice to the owner and a public hearing, the PLANNING BOARD finds that the EXPANSION will have a substantially different and adverse impact on the NEIGHBORHOOD. Impacts will vary depending upon the particular NEIGHBORHOOD; nevertheless, the following criteria will be taken into consideration:
  - (1) The EXCAVATION will not cause a diminution in area property values or unreasonably change the character of the NEIGHBORHOOD.
  - (2) The EXCAVATION will not create any NUISANCE or create health or safety hazards.
  - (3) The EXCAVATION will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.



**170-29.7. Operational Standards.**

- A. For EXCAVATIONS not requiring a permit, the following standards apply. For those EXCAVATIONS requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the PLANNING BOARD.
- (1) No EXCAVATION shall be permitted within fifty (50) feet of the boundary of a disapproving ABUTTER, within one hundred fifty (150) feet of a dwelling that either existed or for which a building permit has been issued at the time the EXCAVATION is commenced.
  - (2) No EXCAVATION shall be permitted below road level within fifty (50) feet of the right-of-way of any public highway as defined in RSA 229:1 unless such EXCAVATION is for the purpose of said highway.
  - (3) Vegetation or suitable BERM or combination of both shall be maintained or provided within the peripheral areas of items (1) and (2) of this section.
  - (4) No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to the storage of such materials.
  - (5) Where temporary slopes will exceed a one to one (1:1) grade, a FENCE or other suitable barricade shall be erected to warn of danger and/or to limit access to the site.
  - (6) Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods.
  - (7) EXCAVATION practices that result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited.
  - (8) No EXCAVATION shall be permitted within one hundred (100) feet of any great pond, navigable river, or any other standing body of water ten (10) acres or more in area, or within fifty (50) feet of any other stream, river or brook which normally flows throughout the year, or any naturally-occurring standing body of water less than ten (10) acres, prime wetland as designated in accordance with RSA 482-A: 15, I or any other wetland area as defined by the Department of Environmental Services (DES) and, Chapter 170, Zoning, Article VII, 170-27.1.C.

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- (9) Sand and gravel extraction operations shall not excavate below an elevation four (4) feet above the seasonal high water table observed when the associated water supply well has not been operating for at least two (2) weeks prior to the date of measurement. Refer to section 170-28.3, Groundwater Protection, for monitoring report requirements.

### **170-29.8. Site RECLAMATION Standards.**

- A. For EXCAVATIONS not requiring a permit, the following standards apply. For EXCAVATIONS requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the PLANNING BOARD.
- B. Within twelve (12) months following the expiration date of a permit issued under these regulations, or the completion of any EXCAVATION with the exception of agricultural activities, whichever occurs first, the excavated area shall be reclaimed in accordance with the following standards:
  - (1) Except for exposed rock ledge, all disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
  - (2) All EARTH and vegetative debris resulting from the EXCAVATION shall be removed or otherwise lawfully disposed of.
  - (3) All slopes, except for exposed ledge, shall be graded to natural repose for the type of soil of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the PLANNING BOARD. Changes of SLOPE shall not be abrupt, but shall blend with the surrounding terrain.
  - (4) Any standing bodies of water created by the EXCAVATION that is judged to constitute a hazard to health and safety shall be eliminated.
  - (5) The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow. For EXCAVATION projects requiring a permit from the Division of Water Supply and Pollution Control, the provisions of RSA 485-A:17 shall supersede this regulation. Copies of all local, state and federal required permits shall be filed with the Planning Office.

**170-29.9. Incremental RECLAMATION.**

Except for EXCAVATION SITES operating STATIONARY MANUFACTURING PLANTS, any excavated area of five (5) CONTIGUOUS acres or more which is depleted of commercial EARTH materials, excluding bedrock, or any EXCAVATION operation from which EARTH materials of sufficient weight or volume to be commercially useful have not been removed for a two (2) year period, shall be reclaimed in accordance with Section 170-29.8. within twelve (12) months following such depletion or non-use, regardless of whether other EXCAVATION is occurring on adjacent land in CONTIGUOUS ownership. A RECLAMATION plan, including a RECLAMATION timetable for the depleted areas within the RECLAMATION site, shall be submitted to the PLANNING BOARD for review and approval by each operator, other than the operators of STATIONARY MANUFACTURING PLANTS that are exempt from permit requirements.

**170-30. Performance Guarantee.**

- A. Prior to the granting of any permit or to the removal of topsoil or other overburden material from a new area within an EXISTING EXCAVATION SITE, the APPLICANT shall submit to the Planning Department a bond with sufficient surety as determined by the City Engineer. In no case shall the incremental bond amount be less than two thousand five hundred dollars (\$2500.00)/acre. The purposes of the bond are to guarantee RECLAMATION of the area, compliance with the permit, and to defray costs of any inspections. OFF-SITE IMPROVEMENTS for potential damage of City streets or facilities caused by the transportation of EARTH materials shall be discussed at this stage.
- B. The surety may be in the form of a performance bond, property escrow, irrevocable letter of credit, or any other form approved by the PLANNING BOARD. The surety may be phased to coincide with the phasing of work, in an amount sufficient to guarantee RECLAMATION of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. The surety shall not be released until the City Engineer is satisfied that all conditions of the site RECLAMATION plan have been complied with.

**170-30.1. Waivers.**

Due to the diverse nature of EXCAVATION operations that vary in scale and scope, and due to the varying conditions of the land to be excavated, the PLANNING BOARD may, upon application and following a duly-noticed hearing, grant any waiver in writing to the standards contained in Sections 170-29.7, 170-29.8, 170-29.9, and 170-30. for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.

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### **170-30.2. Application Procedures.**

Prior to the PLANNING BOARD rendering a decision for an EXCAVATION permit, a public hearing shall be held, with due notification of all ABUTTERS and the public. The procedure for holding these public hearings is as follows:

#### **A. Filing of the Application**

- (1) Applications for EXCAVATION permits shall be filed with the Planning Office by April 1st annually.
- (2) The application will be reviewed with the APPLICANT upon submittal to the Planning Office, and will be accepted only if it is found to meet all submission requirements for a completed application. The application must be accepted as complete no later than April 15th in order to be scheduled for a public hearing. If the application is not completed by the deadline, then another meeting may be scheduled, but may not be later than the expiration date of the permit. All operations shall cease upon permit expiration until a new hearing is scheduled and a completed application is approved.

#### **B. Board Action on Application**

- (1) At the PLANNING BOARD's first meeting date in May, the PLANNING BOARD may vote to accept the application, and if accepted, will schedule a public hearing to be held within thirty (30) days.
- (2) Within twenty (20) days of the close of the hearing on the application, or any continuation thereof, the PLANNING BOARD shall make a decision. The Board may for good cause with proper notice, accept the application, hold the public hearing, and make a decision during the same meeting. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Planning Office within seventy two (72) hours.
- (3) The APPLICANT shall receive a written copy of the minutes along with the decision. In the event the application is disapproved, the reasons for the disapproval shall be given.

#### **C. Notices Required for Public Hearing**

- (1) All ABUTTERS will be notified by certified mail, not less than fourteen (14) days prior to the meeting at which the application will be submitted for acceptance. Names and addresses of ABUTTERS must be taken from City records not more than five (5) days before filing the application.

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- (2) Public notice will appear in a newspaper of general circulation and in at least three public places not less than fourteen (14) days prior to the meeting.
- (3) The notice must include the location and general description of the proposal, as well as the date, time and place of the meeting.

### **D. Fees**

- (1) A filing fee of fifty dollars (\$50.00) plus ABUTTER notification postage shall be paid upon submission of an application, to defray the costs of posting notice for the public hearing. Failure to pay such cost shall constitute grounds for the PLANNING BOARD to not accept the application.
- (2) A permit fee of seventy five dollars (\$75.00) shall be paid upon the issuance of a permit, to defray the costs of permit compliance.
- (3) A fee payable to the Strafford County Register of Deeds (SCRD) shall be paid upon approval, for the filing of any new plan, if so required by the PLANNING BOARD.
- (4) Additional reasonable fees shall be charged should the PLANNING BOARD require the advice of an engineer or other expert to review plans or inspect the site to determine permit compliance.

### **170-30.3. Application Submission Items.** [Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

The APPLICANT shall submit at least fifteen (15) copies of an EXCAVATION and a RECLAMATION Plan; one additional copy shall be sent to the Conservation Commission. The plans shall be at a scale appropriate for the land area involved. The PLANNING BOARD may, upon good cause shown, waive any of the items in Paragraphs A or B below.

#### **A. EXCAVATION Plan**

The EXCAVATION plan shall address specific actions to be taken on the site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. The plan shall show or be accompanied by the following items:

- (1) Name and address of the owner, the excavator (if different) and all ABUTTERS.
- (2) Name, address, and Signature with professional stamp of the person preparing the plan; date, bar scale and north arrow.

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- (3) Zoning district boundaries of the proposed area and within two hundred (200) feet of the boundary of the project.
- (4) Sketch and description of the location and boundaries of the proposed and any EXISTING EXCAVATIONS; including the area in square feet and acre.
- (5) The location of existing BUILDINGS, STRUCTURES, septic systems and wells within two hundred (200) feet of the boundary.
- (6) Public STREETs, driveways, intersections, rights-of-way, and all easements within two hundred (200) feet; road network to be affected; intended transportation routes to be used.
- (7) Topography at contour intervals of five (5) feet or less.
- (8) All surface drainage patterns including wetlands and standing water.
- (9) Sketch and description of existing and proposed access roads, including width and surface materials.
- (10) The breadth, depth and SLOPE of the proposed EXCAVATION and the estimated duration of the project.
- (11) The elevation of the highest annual average ground water table within or next to the proposed EXCAVATION. Refer to Zoning Section 170-28.3., Groundwater Protection, for requirements of the annual report documenting compliance with the four (4) foot buffer rule.
- (12) Test pits that extend to either the seasonal high water table, ledge, or a minimum of six (6) feet below the maximum proposed EXCAVATION depth, including location and soils data; boring logs may be submitted separately.
- (13) Proposed fencing, buffers or other visual barriers, including height and materials.
- (14) All measures to control erosion, sedimentation, water pollution, air pollution, and any hazards to human safety.
- (15) Plans for storm water management.
- (16) Plans for storage, use, and disposal of petroleum products and other regulated materials.
- (17) Methods to prevent materials from the site from being tracked onto public roadways.

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- (18) Copies of all necessary state and federal permits.
- (19) All infrastructure and topographic information shall be submitted in an electronic format, as well as on paper.

### **B. RECLAMATION Plan**

The RECLAMATION plan shall address the effects of the proposed EXCAVATION on soil, surface and groundwater, vegetation, overburden, topography, and fill material, and should address future land use consistent with the City's Master Plan. The plan shall show or be accompanied by the following items:

- (1) Name, address, and signature with professional stamp of the person preparing the plan; date, bar scale and north arrow.
- (2) All boundaries of the area proposed for RECLAMATION and the land within two hundred (200) feet of the boundary of this site.
- (3) Final topography of the area proposed for RECLAMATION, at contour intervals of five (5) feet or less.
- (4) Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
- (5) Timetable as to fully depleted sites within the EXCAVATION AREA.
- (6) Schedule of final RECLAMATION activities including seeding mixtures, cover vegetation, fertilizer types, and application rates.

### **C. Other Information**

The PLANNING BOARD reserves the right, per RSA 155-E:3, VII to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. According to the authority vested in the PLANNING BOARD by RSA 676:4,I (g), any reasonable expenses incurred for such information or reviews shall be charged to the APPLICANT. Failure to pay such costs constitutes valid grounds for the PLANNING BOARD to deny the application. The following items shall accompany the application:

- (1) An annual report documenting compliance with the requirements of Section 170-28.3, Groundwater Protection. Pursuant to RSA 155-E:11, the requirements of this section may be waived if the APPLICANT demonstrates that such exception shall be recorded in the Registry of Deeds, and one copy filed with the NH Department of Environmental Services.

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- (2) A written statement from the Tax Collector that all current property and EXCAVATION taxes levied against all properties in the operation have been paid in full and that there are no unreleased tax liens encumbering said properties
- (3) A copy of the Notice of Intent to Excavate filed with the Assessor's Office.
- (4) A copy of the surety bond or other form of performance guaranty as approved by the PLANNING BOARD.

### **170-30.4. Administration and Enforcement.**

#### **A. Permits**

- (1) Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the PLANNING BOARD. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
- (2) A permit shall be valid for one (1) year and the expiration date shall be May 30th.
- (3) Failure to file for a permit shall be considered a violation and operators who fail to file will be issued a cease and desist order by the Zoning Administrator.
- (4) The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
- (5) All permitted sites shall be inspected on a bi-annual basis. Inspections shall be scheduled in April to coincide with annual permit applications and in October each year by the Zoning Administrator or his designee. The inspection reports shall be timely submitted to the PLANNING BOARD for their review.

#### **B. Amendments and Renewals**

Permit holders wishing to alter the size or location of the EXCAVATION, the rate of removal or the plan for RECLAMATION shall apply for a renewal or amendment; following the same procedures as those required for the original EXCAVATION permit.

#### **C. Inspections**

The Zoning Administrator or his designee may make periodic inspections of all EXCAVATION SITES to determine if the operations are in conformance with these regulations and the approved plans.

#### **D. SUSPENSIONS and REVOCATIONS**



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The Board may suspend or revoke a permit if the Zoning Administrator determines that any provision of the permit has been violated, a material misstatement made in the application upon which a permit was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist. Such SUSPENSION or REVOCATION shall be subject to a motion for rehearing thereon and appeal in accordance with these regulations to the ZONING BOARD OF ADJUSTMENT.

### **E. Appeals**

Any person affected by the PLANNING BOARD'S decision to approve or disapprove an application or any amendment thereto or any SUSPENSION or REVOCATION of a permit, may appeal to the ZONING BOARD OF ADJUSTMENT for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Zoning Board shall either grant or deny the request for rehearing within (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Zoning Board's decision on a motion or rehearing may appeal in accordance with RSA 677:4-15.

### **F. Penalties**

Fines, penalties and remedies for violations of this regulation shall be the same as for violations of RSA 676:15 and 17. Whoever violates any provision of this regulation, a permit or a valid order issued hereunder shall be guilty of a misdemeanor.

### **170-31. Reserved.**

## **ARTICLE IX**

### **SIGNS AND FENCES**

**170-32. SIGN review and Regulations.** [Amended on 3-14-84 by Ord. No. 7-84; Amended on 6-10-87 by Ord. No. 13-87; Amended on 10-26-88 by Ord. No. 18-88; Amended on 08-01-90 by Ord. No. 8-90; Amended on 04-21-93 by Ord. NO. 04-93; Amended on 11-22-95 by Ord. No. 19-95; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 03-21-2007 by Ord. No. 01-07; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 2010.10.27-13; Amended on 02-22-2012 by Ord. No. 2012.01.25.]

Purpose. The purpose of this section is to create a legal framework for SIGNAGE regulations that is intended to facilitate a flexible and agreeable communication between people.

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Such an ordinance acknowledges the need to protect the safety and welfare of the public, the need for a well-maintained and attractive appearance throughout the City of Dover and the need for adequate business identification, advertising and communication. While this section recognizes that aesthetics and design quality cannot be satisfactorily legislated, it does, however, operate on the premise that a large percent of that which is unattractive can be eliminated by sensible quality control through adequate maintenance and inspection and by reasonable guidelines formulated to minimize clutter.

- A. Permitted SIGNS. No SIGN shall be permitted within the City of Dover, except in accordance with the provisions of this section. See tables of Use and Dimensional Regulations By District for overview of permitted SIGNS.
- B. Permit required. No SIGN, other than a directional SIGN, a residential nameplate or SIGN advertising a sale or lease of a premise, shall be erected or placed in the City of Dover without a SIGN permit. Said permit shall be issued by the Zoning Administrator, provided that the SIGN meets all the regulations of this section, after the submission of a set of plans to an appropriate scale, showing site location, dimensions, method of illumination, if any, and types of materials to be used in construction. Replacement of existing SIGNS and support STRUCTURES, where the area, location or materials are being altered, shall require a permit, and such replacement shall conform to the regulations of this section.

The Zoning Administrator may issue a sign permit in conjunction with the approval of a site plan by the PLANNING BOARD, after sufficient review of compliance with the regulations herein and payment of any permit fees.

- C. General provisions. All SIGNS shall conform to the following regulations:
  - (1) All SIGNS shall be located on the same LOT as the uses which they identify with the following exceptions:
    - (a) Political advertising SIGNS. Political advertising SIGNS shall be regulated as required in Subsection L.
    - (b) Industrial Park SIGNS. Industrial Park SIGNS shall be regulated as required in Subsection J (2) (g).
    - (c) Temporary Real Estate and Yard Sale SIGNS. Temporary (forty eight (48) hours) real estate and yard sale SIGNS may be located off site with the permission of the property owner of the land on which the SIGN is to be placed.

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- (d) Non-profit, public benefit and/or municipality related temporary SIGNS/ with consent of the Zoning Administrator.
- (2) All SIGNS shall be constructed, erected and maintained so as not to present a hazard to persons and property.
- (3) All SIGNS shall be erected in such a manner so as not to obstruct free and clear vision along or onto a public right-of-way.
- (4) All SIGNS shall be erected in such a manner so as not to obstruct the view of, be confused with or mistaken for any authorized traffic SIGN, signal or like device.
- (5) The illumination of any SIGN shall be nonflashing; spot- or floodlights shall be arranged so that the direct rays of light do not shine or reflect directly into adjacent properties or the line of vision or a motorist.
  - (a) FLASHING SIGNS are prohibited.
  - (b) Illuminance of the sign face shall not exceed the following standards:
    - (i) External illumination: fifty (50) foot-candles as measured on the sign face.
    - (ii) Internal illumination: five thousand (5,000) nits (candelas per square meter) during daylight hours, and five hundred (500) nits between dusk and dawn, as measured at the sign's face.
    - (iii) Direct illumination: five thousand (5,000) nits during daylight hours, and five hundred (500) nits between dusk and dawn, as measured at the sign's face.
- (6) The top edge of a WALL SIGN shall be at least one (1) foot below the top of the wall or PARAPET wall. The top edge of a roof SIGN shall be at least one (1) foot below the roof ridge or the highest point of the roof if no ridgepole exists.<sup>§§</sup>
- (7) No SIGN shall be painted or affixed with adhesive directly on the surface of a BUILDING.
- (8) Rotating SIGNS or beacons, waving pennants or whirling devices are prohibited.
- (9) Temporary A-frame, portable or wheeled SIDEWALK or curb SIGNS are prohibited, except as otherwise provided in this section. Refer to Subsections .E (3), .F (2), and .K (2)

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<sup>§§</sup>See Figure 1 of the SIGN Diagrams, Part I, included at the end of this chapter

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- (10) All SIGNS are prohibited within the public right- of-way, except as otherwise provided in this section.
- (11) The terms of this section shall not be construed so as to exclude SIGNS being necessary for the public welfare, and as such, are required by the municipal government and historical associations, etc. Display SIGNS pertaining to SERVICE CLUBS and/or civic associations may be erected or displayed within all districts upon approval of the Zoning Administrator.
- (12) The material and construction of any SIGN or supporting elements shall be in accordance with the National Building and Electrical Codes (in use by the City at the time of installation) and all other applicable city regulations.
- (13) On a corner LOT, no FREESTANDING SIGN or support element shall be erected to materially impede vision between a HEIGHT of two and a half (2 ½) feet and eight (8) feet above curb grades in the same area bounded by the STREET lines of such corner LOT and a straight line joining points along said STREET lines thirty (30) feet from point of their intersection except as otherwise provided in this section.
- (14) Essential directional SIGNS not exceeding four (4) square feet, in area, are permitted indicating entrance and exit driveways.
- (15) SIGNS not exceeding two (2) square feet, in area, are permitted in parking LOTS indicating aisles or reserved areas or spaces.
- (16) One (1) SIGN not exceeding thirty-two (32) square feet on a BUILDING or project under construction, identifying the architect, owner and/or contractor. Such SIGN shall be removed upon the receipt of a CERTIFICATE OF OCCUPANCY.
- (17) WALL SIGNS shall conform to the following additional regulations:
  - (a) No WALL SIGN shall be located in such a manner so as to extend above the next floor's window sill or descend below the top of the lower floor's lintel.\*\*\*
  - (b) In all nonresidential zoning districts where a business/premises fronts on more than one (1) public STREET or municipal parking LOT, one (1) WALL SIGN shall be permitted for each FRONTAGE. The SIGN AREA displayed shall not exceed that area permitted by the FRONTAGE on that public STREET or parking LOT.†††

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\*\*\* See Figure 2 of the SIGN Diagrams, Part I, included at the end of this chapter.

††† See Figure 3 of the SIGN Diagrams, Part I, included at the end of this chapter.

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- (c) In all nonresidential zoning districts, one (1) informational/directional WALL SIGN shall be permitted for each BUILDING entryway. Said SIGN shall not exceed four (4) square feet in area and shall not be illuminated.

(18) All FREESTANDING SIGNS shall conform to the following regulations:

- (a) No FREESTANDING SIGNS shall be located in an area designated for parking unless said SIGN is protected along all sides by curbing. A four (4) foot clear space is required along all approaches.<sup>+++</sup>
- (b) No FREESTANDING SIGN shall be placed within fifty (50) feet of a low-density residential district (R-40, R-20) boundary.

(19) All PROJECTING SIGNS shall conform to the following additional regulations:

- (a) PROJECTING SIGNS shall be attached to the main wall of the BUILDING.
- (b) PROJECTING SIGNS shall be prohibited from projecting over a STREET, alley or other PUBLIC SPACE beyond four (4) feet eight (8) inches from a BUILDING facade or two-thirds (2/3) of the width of the SIDEWALK, whichever is less.<sup>§§§</sup>
- (c) A clear space of not less than ten (10) feet shall be provided below all parts of a PROJECTING SIGN, except for residential nameplates.
- (d) In all nonresidential zoning districts where a business/premise fronts on more than one (1) public STREET or municipal parking lot, one (1) PROJECTING SIGN shall be permitted for each FRONTAGE. The SIGN AREA displayed shall not exceed that area permitted by the FRONTAGE on that public STREET or parking lot.

(20) Awnings may be used in lieu of permitted WALL SIGNS provided said letters, insignia or emblems do not exceed the square footage allowed for a WALL SIGN in the applicable zoning district.

D. SIGNS permitted in residential districts. Any SIGN permitted in a Residential District shall conform to the following regulations (See tables for overview of permitted SIGNS):

- (1) CUSTOMARY HOME OCCUPATION SIGNS shall identify only the name of each occupant and the street address. Said SIGN shall not exceed two (2) square feet and shall not be subject to the permit requirements of this section.

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<sup>+++</sup> See Figure 4 of the SIGN Diagrams, Part I, included at the end of this chapter.

<sup>§§§</sup> See Figure 5 of the SIGN Diagrams, Part I, included at the end of this chapter.

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- (2) One (1) SIGN not to exceed four (4) square feet to announce for sale or rent real property or any part thereof upon which said SIGN is located. Said SIGN shall not be subject to the permit requirements of this section.
  - (3) One (1) SIGN not to exceed sixteen (16) square feet may be erected in connection with any legally permitted non-residential use, excepting home occupations and BED AND BREAKFASTS.
  - (4) One (1) SIGN may be erected in connection with a lawfully maintained NONCONFORMING USE.
  - (5) All nonresidential SIGNS may only be illuminated by a constant indirect source of lighting. The lighting element shall be shielded and shall illuminate only the SIGN. No SIGN shall be so illuminated after 9:00 p.m.
  - (6) One (1) SIGN not to exceed four (4) square feet may be erected in connection with a BED AND BREAKFAST.
  - (7) No SIGN shall be located greater than eight (8) feet above the ground, whether freestanding or attached to a BUILDING
- E. SIGNS permitted in CBD, and CWD Zones. SIGNS shall relate only to the premises upon which they are located, identifying the occupancy of such premises or advertising the articles or services available within such premises (See table for overview of permitted SIGNS).
- (1) WALL SIGNS\*\*\*\*
    - (a) An additional one (1) square foot of SIGN AREA per one (1) foot of BUSINESS FRONTAGE shall be permitted, provided that the character of the SIGN conforms to mill motif design criteria. Refer to Subsection P<sup>†††</sup> for applicable criteria.
  - (2) FREESTANDING SIGNS
    - (a) Where a PRINCIPAL BUILDING fronts on more than one (1) STREET, one (1) FREESTANDING SIGN may be erected for each FRONTAGE.
  - (3) Temporary SIDEWALK/A-frame SIGNS
    - (a) Temporary SIDEWALK/A-frame SIGN permits shall remain in effect for a period of one (1) year.

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\*\*\*\* See Figure 6 of the SIGN Diagrams, Part II, included at the end of this chapter.

††† References to Subsection P (formerly Subsection Q)

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- (b) One (1) SIDEWALK/A-frame SIGN shall be permitted per each PRINCIPAL BUILDING, or portion thereof under separate ownership, regardless of the number of individual tenants within said BUILDING. BUILDINGS with an excess of one hundred (100) feet of STREET FRONTAGE shall be permitted one (1) additional SIDEWALK SIGN.
  - (c) No SIGN shall be permitted on a city SIDEWALK or public right-of-way unless a five (5) foot, clear passageway can be maintained at all times.
  - (d) All SIDEWALK SIGNS shall be assigned a specific geographical location by the Zoning Administrator.
  - (e) A certificate of insurance in the amount of one hundred thousand dollars (\$100,000.00) (bodily injury/property damage) shall be filed with the Zoning Administrator to assure sufficient liability coverage of the APPLICANT.
  - (f) A hold-harmless certification letter shall be filed with the Building Inspector to relieve the City of Dover from bodily injury and property damage liability.
  - (g) All SIDEWALK SIGNS shall conform to the mill motif design criteria (Subsection P).
  - (h) SIDEWALK SIGNS shall only be displayed during business hours.
- F. SIGNS permitted in B-3 Thoroughfare Business District. SIGNS shall relate only to the premises upon which they are located, identifying the occupancy of such premises or advertising the articles or services available within said premises. (See table for overview of permitted SIGNS)
- (1) FREESTANDING SIGNS
    - (a) Where a PRINCIPAL BUILDING fronts on more than one (1) STREET, one (1) FREESTANDING SIGN may be erected for each FRONTAGE, provided that the BUILDING complies with applicable SETBACKS.
    - (b) One (1) FREESTANDING SIGN shall be permitted for every principal entryway to a SHOPPING CENTER. Such SIGNAGE shall be a distance of five hundred (500) feet apart.
  - (2) Temporary SIGNS. Temporary SIGNS may be erected in the B-3 Thoroughfare District to advertise newly located businesses provided that the following guidelines are met:
    - (a) Temporary SIDEWALK/A-frame SIGN permits shall remain in effect for not more than six (6) months.

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- (b) Only one temporary SIGN shall be permitted per new business.
- (c) The property owner shall be required to execute a hold harmless certification letter in a form approved by the General Legal Counsel for the purpose of indemnifying and holding the City harmless from any liability due to the use or existence of any such temporary SIGN. All such agreements shall be kept on file in the Department of Planning and Community Development Office.

G. SIGNS permitted in B-1 NEIGHBORHOOD Business Districts. SIGNS shall relate only to the premises upon which they are located, identifying the occupancy of such premises or advertising the articles or services available within said premises. No SIGN shall be illuminated after 9:00 p.m. (See table for overview of permitted SIGNS.)

### **(1) PROJECTING SIGNS**

- (a) All PROJECTING SIGNS shall only be illuminated by a constant indirect source of lighting. The lighting element shall be shielded and shall illuminate only the SIGN.

H. SIGNS permitted in O Office District. SIGNS shall relate only to the premises upon which they are located, identifying the occupancy of such premises or services available within said premises. No SIGN shall be illuminated after 9:00 p.m. (See table for overview of permitted SIGNS.)

- (1) SIGNS shall only be illuminated by a constant indirect source of lighting. The lighting element shall be shielded and shall illuminate only the SIGN.

I. SIGNS permitted in Industrial Districts I-1, I-2, and I-4. SIGNS shall relate only to the premises upon which they are located, identifying the occupancy of such premises or advertising the articles or services available within such premises. (See table for overview of permitted SIGNS.)

### **(1) FREESTANDING SIGNS**

- (a) Where a PRINCIPAL BUILDING fronts on more than one (1) STREET, one (1) FREESTANDING SIGN may be erected for each FRONTAGE, provided that the BUILDING complies with applicable SIGNAGE SETBACKS.
- (b) Two (2) FREESTANDING SIGNS shall be permitted within an approved industrial park, provided that the combined square footage of such SIGNS does not exceed five hundred (500) square feet in area, that they are used solely for the purposes of identifying the park, its occupancies and uses, location and layout, and that, if on a corner LOT, such SIGNS shall be set so



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as to not materially impede vision, subject to the discretion of the Building Official and the City Engineer.

- J. SIGNS permitted in ETP and B-4 Districts. SIGNS shall relate only to the premises upon which they are located, identifying the occupancy of such premises or advertising the articles or services available within such premises. (See table for overview of permitted SIGNS.)

(1) FREESTANDING SIGNS

- (a) Where a development fronts on more than one (1) public STREET or roadway, one (1) FREESTANDING SIGN shall be permitted for each FRONTAGE.
- (b) Each FREESTANDING SIGN shall not exceed sixteen (16) feet in height, except as provided for below, and shall be permanently affixed to the ground. Notwithstanding, FREESTANDING SIGNS fronting on the Spaulding Turnpike shall not exceed thirty (30) feet in height.
- (c) SIGN AREA shall not exceed sixty (60) square feet in area. Notwithstanding, a FREESTANDING SIGN fronting the Spaulding Turnpike shall not exceed one hundred (100) square feet in area.

- K. SIGNS permitted in the B-5, Commercial/Retail District SIGNS shall relate only to the premises upon which they are located, identifying the occupancy of such premises or advertising the articles or services available within such premises. (See table for overview of permitted SIGNS.)

(1) FREESTANDING SIGNS.

- (a) Where a development fronts on more than one (1) public STREET, one (1) FREESTANDING SIGN shall be permitted for each FRONTAGE.

Notwithstanding, no FREESTANDING SIGN shall be allowed on Old Rochester Road.

- (2) Temporary SIGNS. Temporary SIGNS may be erected subject to the following regulations:

- (a) Only one (1) temporary SIGN shall be permitted per new business.
- (b) The property owner shall be required to execute a hold harmless certification letter in a form approved by the General Legal Counsel for the purpose of indemnifying and holding the City harmless from any liability due to the use

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or existence of any such temporary SIGN. All such agreements shall be kept on file in the Department of Planning and Community Development Office.

**L. Political advertising SIGNS.** Political advertising SIGNS are permitted as follows:

- (1) The provisions of this section are in addition to the political advertising SIGN provisions of state law
- (2) The person whose name appears on political advertising SIGN, or the person providing consent to placement, is responsible for the placement of and removal of the sign.
- (3) No SIGN in any district shall be larger than sixteen (16) square feet.
- (4) Removal of a political advertising SIGN not placed or removed in accordance with state law or local ordinance shall be subject to an administrative fine as contained in the local fee schedule.

**M. Obsolete SIGNS.** Any SIGN which is located on property which becomes vacant and unoccupied for a period of more than six (6) months or any SIGN which pertains to a business, service activity or event which no longer applies because of discontinuance or relocation of said business, service, activity or event shall be deemed to have been abandoned, and the SIGN shall be considered obsolete. Such obsolete SIGNS are prohibited and shall be removed by the owner of the SIGN or owner of the premises. In the event that the said SIGN(s) and support(s) are not removed as requested by the Zoning Administrator, the City of Dover may remove said STRUCTURE(s) and assess all costs and expenses incurred in said removal against the STRUCTURE's owners and/or the owner of the land upon which said STRUCTURE(s) is located.

**N. Nonconforming SIGNS.** A SIGN installed prior to the effective date of this section which meets the applicable requirements of the zoning code then in effect but which is not in conformance with the provisions of this code shall be deemed a permitted nonconforming SIGN if a permit is obtained for said SIGN within six (6) months after the effective date of this section. Such nonconforming SIGN shall, however, be subject to the following regulations.

- (1) No nonconforming SIGN shall be altered in any way in STRUCTURE or material, which makes the SIGN less in compliance with the requirements of this section than it was before the alterations.
- (2) No nonconforming SIGN shall be relocated to a position making it less compliant with the requirements of this section.

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- (3) If the nonconforming SIGN is replaced, it shall be replaced in total with a SIGN that is in conformance with the provisions of this section.
- (4) Should a nonconforming SIGN be destroyed by any means to an extent of more than seventy-five percent (75%) of its replacement cost at the time of its destruction, it shall not be reconstructed except in conformity with the provisions of this section.

### **O. Mill motif design criteria.**

- (1) Intent. A recurring architectural theme exists within the Central Business District, where the use of brick, granite and slate dominates much of the existing commercial BUILDING stock. Influenced by the early 19th century mill development, SIGNAGE was closely integrated with the style and composition of the BUILDING, often consisting of handsomely carved and painted wooden signboards. The use of dark background tones, highlighted with bright lettering was dominant. PROJECTING SIGNS were typically constructed from dark-hued metal, cast iron in particular, and internal lighting or use of plastics, aluminum and vinyl was nonexistent. The use of a mill motif SIGNAGE theme is an attempt to promote a style or architectural continuity within Dover's urban center. Within the defined mill motif theme, a great amount of flexibility is permitted where design and materials are involved, and all SIGNAGE should be guided by general design criteria.

### **(2) Permit process.**

- (a) The Zoning Administrator shall be responsible for the issuance of SIGN permits relative to mill motif accessory SIGNS. Application for said SIGNS shall include the following items:
  - (i) A scaled elevation drawing of the entire BUILDING façade (s).
  - (ii) Proposed SIGN clearly delineated on the elevation drawing, plus detailed drawings indicating materials, size, colors and style of lettering, lighting and attachment method.
  - (iii) A photograph of the BUILDING.
  - (iv) A sample color rendering of the intended SIGN.
- (b) Upon completion of the review, the Zoning Administrator will approve or disapprove the application and inform the APPLICANT in writing of the decision.

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(3) SIGN location. The physical placement of SIGNAGE on a BUILDING shall be as important in perpetuating the mill motif theme as the SIGN composition itself. To maximize the effectiveness of SIGNS and a BUILDING's architecture, every SIGN shall be required to be an integral part of its BUILDING. SIGNS shall be located with respect to the basic architectural framework of the BUILDING, so as not to obscure the primary elements (door and window openings and decorative facade treatments) of a BUILDING's framework. Refer to Subsection E) (4) (e) for graphic guidelines.

(4) SIGN composition. The visual style of a SIGN is determined by the relationship of its lettering, colors, lighting, and material used. Within the defined mill motif theme, a great range of variations exist among these elements. The design standards set forth herein constitute general design criteria to be followed when determining conformity with the mill motif theme. Refer to Subsection P) (4) (e) for graphic guidelines.

(a) Lettering.

(i) No more than one (1) lettering style shall be permitted per SIGN.

(ii) Letters may be attached to the BUILDING façade.

(iii) Light-colored letters on a dark background are preferred. Dark letters on a light back ground shall only be permitted if it complements the BUILDING's color composition.

(iv) Lettering and signboards shall be located so as not to obstruct architectural detailing on the BUILDING face.

(v) Product trademarks are discouraged; however, trade SIGNS (e.g., a shoe for a cobbler, a mortar and pestle for a druggist) are preferred.

(vi) Letter styles shall be limited to the classic genre, i.e., Copper plate Gothic, Times, Franklin Gothic, Benton, Clarendon, Haas Helvetica, Folio Caravelle Medium, Windsor, and Times Roman.

(vii) The size of the lettering shall be in proportion to both the SIGN configuration and the BUILDING.

(b) Color.

(i) No more than three (3) colors are preferred, including black white. Lettering shall preferably be one (1) color.

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- (ii) Colors used in SIGNAGE should relate to the color composition of the BUILDING material and be compatible with them.
- (iii) The determination of SIGN color must relate to the degree of contrast between the SIGN lettering and SIGN background.
- (c) Lighting.
  - (i) Internally-lit or back-lit SIGNS are prohibited.
  - (ii) Only shielded indirect light shall be permitted if lighting is used.
- (d) Materials.
  - (i) Traditional materials, such as wood, glass, brass, bronze or iron, are preferred. The use of plastic, aluminum and vinyl will only be permitted if styled and composed to imitate wood or iron.
  - (ii) Wooden SIGNS shall be constructed of dense, clear wood that adapts to engraving/carving and paint or stain. Ordinary plywood will not withstand exposure; therefore, only overlay, exterior or marine plywood shall be permitted
  - (iii) PROJECTING SIGNS shall be supported by black, iron attachments to the BUILDING. Guy wires shall not be permitted as a principle SIGN support member.
  - (iv) No support for a PROJECTING SIGN shall extend above the cornice line of the BUILDING to which it is attached.
- (e) Graphic guidelines. The zoning ordinance regarding SIGNS was developed in an effort to limit the size, clutter and inefficiency of uncontrolled SIGNAGE, while encouraging more effective SIGNS through better and more appropriate design. The regulations that have been outlined in this section pertain primarily to maximums for height, size and content of business SIGNS. Concern for size alone, however, does not guarantee the effectiveness of a SIGN or its appropriateness to its location, and both are important for the overall selling power of the SIGN. In order to help business owners, manufacturers and designers and others with the design of quality mill motif SIGNS, the following notes have been prepared as a brief guide:
  - (i) Because it is an old city, Dover's Central Business District (CBD) has evolved from a mill era architectural influence. Almost all of the business STRUCTURES in this area have an architectural character

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worth preserving and enhancing. In this district, however, whether an individual BUILDING is of great architectural merit does not matter as much as the fact that individual BUILDINGS and rows of BUILDINGS visually relate to each other. This sense of history and feeling of architectural unity is one of Dover's unique characteristics; it is attractive to both tourists and residents alike. And although nothing in the long run can replace the quality and character of a business concern's services or merchandise in drawing and keeping customers, the architecture of an individual BUILDING and the combined impact of groups of adjoining BUILDINGS, can be part of the attraction of a shopping district. Ideally, then, to maximize the effectiveness of SIGNS and BUILDING its BUILDING, and each BUILDING should have a good visual influence within its BLOCK of BUILDINGS. As a result, the BUILDING and its SIGN become part of an overall image, each supporting the other and helping to draw customers. This leads to a simple but vital point: A SIGN on a BUILDING should always be thought of as part of the BUILDING and not as an unrelated object attached to it. Figures A, B, C and D illustrate this point.<sup>\*\*\*\*</sup>

- (ii) Just as a SIGN should respect a BUILDING façade, a row of shops and their SIGNS are most effective when the architecture and rhythm of the STREET is preserved and even emphasized by the design of all the SIGNS.

The matter of SIGNS becomes a concern for all neighboring businesses; a harmonious and uncluttered row of shops with legible well-designed SIGNS is much more attractive to shoppers than a hodge-podge of SIGNS that confuse the shopper rather than draw him to the area and the individual shops. One of the most common causes of this confusion is the tendency of shop fronts to burst out of their frames in an upward and outward direction until nothing of the original FRONTAGE is visible. Figures E, F and G illustrate the effects of this on a typical stretch of STREET front.<sup>§§§§</sup>

- (iii) Letter styles:<sup>\*\*\*\*\*</sup>

- P. Fees for the review of SIGNAGE are set annually and may be found in the City's Fee Schedule

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<sup>\*\*\*\*</sup> See Figures A, B, C and D are included in SIGN Diagrams, Part III, at the end of this chapter.

<sup>§§§§</sup> See Figures E, F AND G are included in SIGN Diagrams, Part IV, at the end of this chapter

<sup>\*\*\*\*\*</sup> Samples of the various letter styles are on file in the office of the City Clerk and are available for inspection during normal business hours.

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**170-33. FENCE Review and Regulations.** [Amended on 02-17-99 by Ord. No. 25-98;  
Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 12-08-2010 by Ord. No. 2010.10.27-13;  
Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

- A. FENCE Heights. No person, or other entity shall erect or cause to be erected a FENCE exceeding four (4) feet in height between the RIGHT OF WAY and a parallel line with the front of the house closest to the RIGHT OF WAY. FENCES may be up to eight (8) feet in height from said parallel line with the front of the house, around both sides and around the REAR YARD height is measured from ground level.
- B. FENCE design.
  - (1) The finished side of a FENCE shall face outward from the property on which the FENCE is located. The side of a FENCE containing the posts or poles and other bracing appurtenances shall face inward to the property being FENCED in or on which the FENCE is located. When erected on a property or LOT boundary line, all of the FENCE and any of its supporting STRUCTURES or appurtenances shall be contained within the LOT or property of the person erecting said FENCE.
  - (2) On a corner LOT, no FENCE or vegetal elements shall be erected or placed in such a manner(s) as to materially impede vision between that area bounded by the STREET lines of such corner LOT and a straight line joining points along said STREET lines thirty (30) feet from the point to the intersection. For corner LOTS that are located on the inside curve of streets and at intersections that are not perpendicular, adequate and safe sight distances in both directions, as determined by the Zoning Administrator, shall be provided. Property owners shall maintain vegetation such that it does not grow to limit site distance.
- C. Exceptions. The provisions described in Subsection A shall not apply in Industrial (I-2), Restricted Industrial (I-1), Thoroughfare Business (B-3), Central Business (CBD), Office (O), and Cochecho Waterfront (CWD) Zoning Districts, or whenever the ZONING BOARD OF ADJUSTMENT, as a condition attached to the granting of a variance or special exception to this Chapter, requires for screening purposes a FENCE exceeding six (6) feet.

**170-34 through 170-38 (Reserved).**

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### **ARTICLE X**

#### **NONCONFORMING LOTS, USES AND STRUCTURES**

**170-39. Nonconforming LOTS.** [Amended on 6-10-87 by Ord. No. 13-87; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

In any district, STRUCTURES which are allowed by right, but not STRUCTURES that are allowed by special exception, may be erected on any nonconforming LOT of record even though such LOT fails to meet the requirements for area width or FRONTAGE. See 170-14 for exceptions to the dimensional regulations. Further, yard dimensions and requirements other than those applying to area, width and FRONTAGE shall conform to the regulations for the district in which the LOT is located.

**170-40. NONCONFORMING USES of Land.** [Amended on 08-01-90 by Ord. No. 8-90; Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

Where, at the time of passage of this chapter, lawful use of land exists which would not be permitted by the regulations imposed by this chapter, the use may be continued so long as it remains otherwise lawful, provided that:

- A. No such NONCONFORMING USE shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter with the exception of a single-family STRUCTURE. Said single-family STRUCTURE may be expanded up to twenty percent (20%) of its gross habitable floor space provided the addition conforms with all other applicable regulations and ordinances and no additional units are created.
- B. No such NONCONFORMING USE shall be moved, in whole or in part, to any portion of the LOT or parcel other than that occupied by such use at the effective date of adoption or amendment of this chapter.
- C. If any such NONCONFORMING USE of land ceases for any reason for a period of more than twelve (12) consecutive months or for twenty-four (24) months during any three (3) year period, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.
- D. No additional STRUCTURE not conforming to the requirements of this chapter shall be erected in connection with such NONCONFORMING USE of land with the exception of accessory STRUCTURES associated with a single-family house provided they comply with all other applicable City ordinances and regulations.



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- E. The above notwithstanding, if a LOT meets the requirements of 170-14, any additions or accessory STRUCTURES may be allowed to meet the SIDE YARD SETBACKS outlined therein.

### **170-41. Nonconforming STRUCTURES.** [Amended on 08-01-90 by Ord. No. 8-90; Amended on 02-17-99 by Ord. No. 25-98.]

Where a lawful STRUCTURE exists at the effective date of adoption or amendment of this Chapter that could not be built under the terms of this chapter by reason of restrictions on area, LOT coverage, height or yards, its location on the LOT or other requirements concerning the STRUCTURE may be continued so long as it remains otherwise lawful, subject to the following:

- A. Except as provided for in 170-40.A and 170-41.D, no such nonconforming STRUCTURE may be enlarged or altered in a way which increases its nonconformity, but any STRUCTURE or portion thereof may be altered to decrease its nonconformity.
- B. A BUILDING or STRUCTURE nonconforming either in terms of use or BULK may be restored to its former BULK if destroyed by fire or other hazard, provided that restoration of the STRUCTURE is begun within twelve (12) months after the act of destruction. All such STRUCTURES in use at the time of destruction for agricultural purposes shall be exempt from the provisions of this subsection, provided that such reconstruction, ALTERATIONS or repairs are in compliance with the provisions of subsection A.
- C. Should such STRUCTURE be intentionally moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- D. Additions to nonconforming single-family STRUCTURES, that were made nonconforming by a zoning amendment that changed the front, side or REAR SETBACK requirements, shall be permitted within the front, side or REAR SETBACK areas provided that the addition is no closer to the LOT LINE than the existing nonconforming STRUCTURE, and no closer than ten (10) feet from the LOT LINE.

### **170-42. Repairs and Maintenance.**

On any nonconforming STRUCTURE or portion of a STRUCTURE containing a NONCONFORMING USE, ordinary repairs may be made, subject to the following provisions: if a nonconforming STRUCTURE or portion of a STRUCTURE containing a NONCONFORMING USE becomes physically unsafe or unlawful due to lack of repairs and

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maintenance and is so declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located. Any duly authorized official charged with protecting the public safety may rightfully order a STRUCTURE to be secured to a safe condition.

### **170-43. Uses Permitted by Special Exception.**

Any use which is permitted as a special exception in a district under the terms of this chapter (other than a change through the PLANNING BOARD of Adjustment action from a NONCONFORMING USE to another use not generally permitted in the district) shall not be deemed a NONCONFORMING USE in such district, but shall without further action be considered a conforming use.

## **ARTICLE XI**

### **OFF-STREET PARKING AND LOADING**

**170-44. Applicability.** [Amended on 9-24-80 by Ord. No. 15-80; Amended on 3-30-83 by Ord. No. 5-83; Amended on 6-10-87 by Ord. No. 13-87; Amended on 08-01-90 by Ord. No. 8-90; Amended on 11-13-96 by Ord. No. 19-96; Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

The following conditions shall apply to all parking and loading spaces provided in conformance with this chapter:

- A. Conformity with the Site Review Regulations, Chapter 149, Subsections 149-14 and 149-15, site development criteria.
- B. The enlargement of any BUILDING shall require the provision of OFF-STREET PARKING for the existing BUILDING as if it were newly erected, in addition to the required OFF-STREET PARKING SPACES for the enlargement.
- C. All required PARKING SPACES in residential districts shall be upon or adjacent to the LOT upon which they are designed to serve. In all nonresidential districts, such PARKING SPACES shall be provided within a five-hundred-foot radius of the primary STRUCTURE.
- D. Where one (1) BUILDING is used for more than (1) use, parking requirements shall be computed for each use as if it were a principal use.
- E. Where a parking area is provided to serve two (2) or more STRUCTURES, the total number of spaces provided shall be not less than the sum of the individual total numbers of spaces required.

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- F. Where PARKING SPACES are provided for nonresidential STRUCTURES and this parking area adjoins a residential use, suitable screening at least seven (7) feet in height shall be provided and maintained.
- G. Municipal parking LOTS shall not be substituted for the requirements of this section.
- H. In the CBD and CWD Zoning Districts, none of the on-site parking standards shall be binding except in such cases where new construction is proposed that would create additional BUILDING square footage; and or when conversions or changes of use that would result in an increase in the number of residential units.

PARKING SPACES required the CBD and CWD Zoning Districts may be located off-site within one thousand (1,000) feet of the proposed use. The spaces may be located in a municipal parking LOT and leased from the City, or leased from a private landowner. Lease agreements are subject to PLANNING BOARD approval, and must have a minimum duration of five (5) years, and have provisions for renewal at expiration.

- I. Conditional Use Approval.

- (1) Conditional use approval may be granted by the PLANNING BOARD (RSA 674:21 II) after proper public notice and public hearing for the purpose of altering any provisions of Article XI OFF-STREET PARKING and Loading, provided that the proposed project complies with the following standards:

- (a) The APPLICANT submits an analysis justifying a request for reduced parking requirements.
    - (b) The conditional use application shall describe the limits of any parking area subject to the reduced requirements and the reduction applicable to each use.
    - (c) The APPLICANT submit an analysis and/or a parking study substantiating the availability of nearby Alternative parking to be used as a credit towards reducing parking requirements. The APPLICANT must show that the use(s) can be adequately served by a combination of on and OFF-STREET PARKING.
    - (d) The APPLICANT submits data and/or a transit study that indicates that existing and planned transit service in the vicinity justifies the reduction requested. The PLANNING BOARD shall make the determination.
    - (e) The APPLICANT submits a Traffic Reduction and/or Transportation Management Plan which outlines the measure(s) to be taken to permanently

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reduce parking demand. The plan may include any/all of the following initiatives:

- (i) facilitate employee/customer use of mass transit.
  - (ii) facilitate employee/customer use of ride share/van pool program.
  - (iii) establish Alternative work hours/flex time program.
  - (iv) provide incentives to encourage non-vehicular trips, i.e. pedestrian and bicycle alternatives.
  - (v) provide preferred parking for ride share/van pool participants.
  - (vi) create shuttle bus service to/from train/bus stations.
  - (vii) establish an information center to coordinate ride share/van pool efforts among separate uses within a STRUCTURE or complex.
- (f) There shall be no detrimental effects on surrounding properties by any proposal.
- (2) Conditional use approval may also be granted by the PLANNING BOARD to allow a decrease in the OFF-STREET PARKING requirements for a BUILDING or BUILDINGS in close proximity serving more than one (1) use. To obtain such an approval, the APPLICANT must conclusively demonstrate that one (1) or more such uses will generate a demand for PARKING SPACES primarily during periods when the other use or uses are not in operation. Calculations for parking reduction shall be consistent with nationally accepted parking publications such as Shared Parking, (Urban Land Institute, Washington, DC, 1990). The location of all shared PARKING SPACES shall conform with the provisions outlined in Subsections 170-44.C and 170-44.H unless determined otherwise by the PLANNING BOARD.
- (3) Conditional use approval shall be subject to a formal agreement between the PLANNING BOARD and the APPLICANT. Said agreement shall be recorded at the Strafford County Registry of Deeds.
- (4) Any conditional use approval shall apply only to the application specified at the time of approval and shall not be transferable to a different application, BUILDING EXPANSION, or change of use regardless of size. Any subsequent change(s) to a project or plan that has a shared parking agreement shall be subject to review by the Planning Director. If the proposed parking demand is determined

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to increase, the project shall be referred to the PLANNING BOARD for further review.

- J. PARKING SPACES for non-residential uses and MULTI-FAMILY DWELLINGs shall have independent access to an aisle or driveway.

**170-45. Reserved.** [Removed on 12-2009-2009 by Ord. No. 2009.09.09-15.]

**170-46. Loading Spaces.** [Amended 02-20-91 by Ord. No. 02-91.]

In all districts, no nonresidential STRUCTURE shall be erected, enlarged or used unless off-STREET loading spaces are provided as specified herein.

- A. OFF-STREET loading spaces shall be provided on the same LOT as the principal use they are intended to serve. In no instance shall an off-STREET loading space be counted as part of an area to satisfy the OFF-STREET PARKING requirements and vice versa.
- B. No loading bay in a nonresidential district shall be located within one hundred (100) feet of a residential district boundary or within one hundred (100) feet of the LOT LINE of an abutting residential use.
- C. All bays shall be located at the side or REAR of the BUILDING they are intended to serve.
- D. The minimum number of required loading spaces shall be determined by the PLANNING BOARD. †††††

## **ARTICLE XII**

### **ADMINISTRATION**

**170-47. Administrative Officer.** [Amended 12-09-2009 by Ord. No. 2009.09.09-15]

- A. This Chapter shall be enforced by the Zoning Administrator, who shall have the authority to make inspections necessary to carry out his/her duties in the enforcement of this Chapter.
- B. The Building Inspector shall not approve an application or issue a BUILDING permit or CERTIFICATE OF OCCUPANCY for any purpose, except in compliance with the provisions of this Chapter.

**170-48 – 170-150. Reserved.** [Removed on 12-09-2009 by Ord. No. 2009.09.09-15]

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††††† Previous table illustrating number of loading spaces has been replaced by subsection D, by Ord. No. 02-91

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### **170-51. Violations and Penalties.** [Amended on 9-24-80 by Ord. No. 15-80.]

- A. Violations. The administrative officer shall serve a notice of violation and order to any owner or person responsible for the erection, construction, reconstruction, conversion or ALTERATIONS of a STRUCTURE, increase in intensity of use or extension or displacement of use of any STRUCTURE or LOT in violation of any approved plan, information or drawing pertinent thereto, or in violation of a permit or certificate issued under the provisions of this chapter; and such order shall direct the immediate discontinuance of the unlawful action, use or condition and the abatement of the violation. Any owner or person who has been served with a notice and ceases any work or other activity shall not leave any STRUCTURE or LOT in such a condition as to be a hazard or menace to the public safety, health or general welfare.
- B. Prosecution of violations. If the notice of violation and order is not complied with, the Building Inspector shall cause to be initiated the appropriate action or proceeding so to prevent any continued unlawful action or condition and to restrain, correct or abate such violations. Any person who knowingly takes part in continuance of said violation(s) shall, for each and every violation(s), be liable to a fine not to exceed one hundred dollars (\$100.00). Each day beyond the expiration of the aforementioned notice of violation and order shall constitute a separate offense.

### **170-52. ZONING BOARD OF ADJUSTMENT.** [Amended on 9-24-80 by Ord. No. 15-80; Amended on 6-10-87 by Ord. No. 13-87; Amended on 08-01-90 by Ord. No.8-90; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]

- A. Purpose. The purpose of the ZONING BOARD OF ADJUSTMENT is to hear and decide appeals of any person(s) who are aggrieved by the administration, enforcement and application of this Chapter.
- B. Authority. The ZONING BOARD OF ADJUSTMENT shall be duly constituted and shall have such duties and powers as specified under RSA 673:3 and 674:33 and this chapter as set forth herein.
- C. Powers and duties.
  - (1) Powers. The ZONING BOARD OF ADJUSTMENT shall have the following powers:
    - (a) To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the in the enforcement of this Chapter (interpretation of ordinance).

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- (b) To hear and decide special exceptions to the terms of this Chapter upon which the ZONING BOARD OF ADJUSTMENT is required to pass under this Chapter (special exception).
  - (c) To authorize, upon appeal in specific cases, such variance from the terms of this Chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship and so that the spirit of this Chapter shall be observed and substantial justice done (variance).
  - (d) To hear and decide requests for equitable waivers from the dimensional terms of this Chapter upon where a structure has been found to be in violation of said dimensional requirement.
- (2) Interpretation of chapter.
- (a) On appeal from an order or decision made by any officer or board of the City, the ZONING BOARD OF ADJUSTMENT shall have the power to decide any of the following questions:
    - (i) Determination of the meaning of any provision of the text of this Chapter.
    - (ii) Determination of the exact location of any district boundary shown on the Zoning Map.<sup>\*\*\*\*\*</sup>
    - (iii) ZONING BOARD OF ADJUSTMENT shall hear and decide appeals de novo and review on appeal any order, requirement, decision or determination made in the enforcement or application of this chapter. Upon such appeal, the ZONING BOARD OF ADJUSTMENT may, in accordance with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify any such order, requirement or decision, as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- (3) Special exceptions. ZONING BOARD OF ADJUSTMENT shall have the power to hear and decide on application for special exceptions. In applying a special exception, the APPLICANT need not demonstrate hardship, since the basis for the action is of general benefit to the city as a whole. In granting a special exception, the ZONING BOARD OF ADJUSTMENT, with due regard to the nature and condition of all adjacent STRUCTURES and uses and the district

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<sup>\*\*\*\*\*</sup> Said Zoning Map is on file in the office of the City Clerk, where it may be examined during regular business hours.

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within which the same is located, shall find all of the following general conditions to be fulfilled:

- (a) The requested use is essential or desirable to the public convenience or welfare.
  - (b) The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
  - (c) The requested use will not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety or the general welfare. Refer to Article VI of this Chapter for additional provisions regarding special exceptions.
  - (d) Any special exception which has not been acted upon in accordance with the approval of the ZONING BOARD OF ADJUSTMENT within four (4) years of the date of said approval shall be considered null and void.
- (4) Variances.
- (a) The ZONING BOARD OF ADJUSTMENT may authorize a variance from the terms of this Chapter for:
    - (i) A particular use.
    - (ii) A parcel of land.
    - (iii) An existing/proposed BUILDING.
  - (b) Said variance shall only be granted where unusual difficulty or special hardship would be imposed by the literal application and rigorous enforcement of this Chapter.
  - (c) In granting variances, the ZONING BOARD OF ADJUSTMENT, if it deems it proper to the carrying out of the intent and purpose of this Chapter, may impose such reasonable and additional stipulations and conditions as will, in its judgment, better fulfill the purpose of the Chapter.
  - (d) Any variance which has not been acted upon in accordance with the approval of the ZONING BOARD OF ADJUSTMENT within four (4) years of the date of said approval shall be considered null and void.



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- (5) Other requirements. The granting of any appeal by the ZONING BOARD OF ADJUSTMENT shall not exempt the APPLICANT from any provision of this Chapter not specifically ruled upon by the ZONING BOARD OF ADJUSTMENT or specifically set forth as excepted in this particular case from a provision of this Chapter. It shall be unlawful for any owner or person to reconstruct, convert or ALTER a STRUCTURE or change the use, increase the intensity of use or extend or displace the use of any BUILDING, other STRUCTURE or LOT or change any required limitations or special conditions imposed by the ZONING BOARD OF ADJUSTMENT in authorizing a special exception or variance without appealing to the ZONING BOARD OF ADJUSTMENT as a new case, over which the ZONING BOARD OF ADJUSTMENT shall have complete administrative power to deny, approve or modify.
- (6) Public Hearing. The ZONING BOARD OF ADJUSTMENT shall fix a reasonable time for the hearing of an appeal in accordance to its By-Laws; and before any hearing is given either on an appeal or an application for variance or special exception of this Chapter, notice shall be given to all ABUTTERS of any portion of the LOT in question. Notice shall be given to ABUTTERS by certified mail, and also placed in a newspaper of general circulation, not less than five (5) days before the date fixed for the hearing of the appeal. The costs of any notice shall be paid by the appellant or APPLICANT to the Department of Planning and Community Development

### **D. Appeal from the decision of the ZONING BOARD OF ADJUSTMENT.**

- (1) Rehearing. Within thirty (30) days after any order or decision of the ZONING BOARD OF ADJUSTMENT, any party to the action or proceedings or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding or covered or included in the order, specifying in the motion for rehearing the grounds therefor; and the ZONING BOARD OF ADJUSTMENT may grant such rehearing if, in its opinion, good reason therefor is said in such motion.
- (2) Appeal to Superior Court. No appeal from any order or decision of the ZONING BOARD OF ADJUSTMENT shall be taken unless the appellant shall have made application for rehearing as provided above, and when such application shall have been made, no ground set forth herein shall be urged, relied on or given any consideration by the Court, unless the Court for good cause shown shall allow the appellant to specify additional grounds. Within thirty (30) days after the application for a rehearing is denied or, if the application is granted, then within thirty (30) days of the decision on such rehearing, the APPLICANT may appeal by petition to the Superior Court.

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### **170-53. Amendment Procedure.** [Amended on 12-09-2009 by Ord. No. 2009.09.09-15]

- A. Power to Amend. In accordance with RSA 674:16, the City Council may, from time to time, amend the provisions of this Chapter.
- B. Initiation of Amendments. Amendments may be initiated by the City Council, the PLANNING BOARD, or by petition from one or more property owners in Dover or citizens of Dover.
- C. Procedure for Consideration of a Proposed Amendment.
  - (1) Amendments Initiated by the PLANNING BOARD. The PLANNING BOARD may, upon its own initiative, from time to time, consider amendments to the this Chapter or Zoning Map, and submit recommendations for amendments to the City Council. Such amendments shall be developed pursuant to the public notice and hearing requirements contained in Section D below.
  - (2) Amendments Initiated by the City Council. The City Council may, upon its own initiative, from time to time, consider amendments to this Chapter or Zoning Map. All such City Council initiated amendments shall be referred to the PLANNING BOARD for its review and study. The referral shall be made in writing by the Mayor. The PLANNING BOARD shall, after following the public notice and hearing requirements contained in Section D below, submit written recommendations regarding the amendments to the City Council within sixty (60) days of their referral.
  - (3) Amendments Initiated by Dover Citizens or Property Owners. Dover citizens or owners of property in Dover submitting amendments to this Chapter or Zoning Map, shall forward their proposed amendments to the PLANNING BOARD for its consideration and recommendation. Such submission shall contain the information required by Section E below. The PLANNING BOARD shall have the petition placed on the agenda for its next regularly scheduled meeting that proper notice, as required in Section D below, can be met. After the public hearing, the PLANNING BOARD shall make its recommendations concerning the petitioned amendments to the City Council within sixty (60) days of the date of the initial public hearing.
- D. Public Notice and Hearing Requirements.
  - (1) Public Notice. Public notice shall be given for the time and place of the public hearing at least ten (10) days before the hearing, not including the day the notice is posted or published or the day of the public hearing. Notice of the public

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hearing shall be placed in a newspaper of general circulation in the city and shall be posted in at least three (3) public places, including the City web-site.

- (2) Notice to Landowners and ABUTTERS. Except as hereinafter provided, a letter of notification shall be sent to landowners whose property lies within that area affected by the proposed amendment and to landowners whose property lies within one hundred (100) feet of the subject area. All such notices shall be by first class mail and shall be sent at least ten (10) days prior to the scheduled public hearing date.
- (3) Text of Notice. All letters of notification and public notices shall state the time and place of the public hearing, the nature of the amendment, a general description of the property involved, where applicable, and designating a place where the full text of the amendment is on file for public inspection.

### **E. Submission Requirements for Petitioned Amendments.**

A petitioned amendment proposal shall be accompanied by maps, data and narrative information describing the location, nature and purpose of the proposed amendment, as follows:

- (1) A properly drafted ordinance containing the amendment in a form meeting the requirements of the City Clerk;
- (2) A statement of the purposes and intent of the proposed amendment
- (3) A statement of the impact of the proposed amendment on the City's economy, environment, municipal services, municipal facilities and NEIGHBORHOODS;
- (4) A map showing the existing zoning districts and the amendments to these districts as proposed in the amendment, if applicable;
- (5) The names, addresses, and telephone numbers of those submitting the petition and of any agents or representatives of the same;
- (6) A list and address labels including the name, address, and tax map number of each property owner of the area proposed for rezoning and each property owner within one hundred (100) feet of the subject area. The list shall be current within ten (10) days of submittal; and
- (7) A non-refundable fee in the fifty dollars (\$50.00) to cover the cost of the newspaper notice, and a non-refundable fee of one dollar (\$1.00) per landowner and ABUTTER required to be notified per Section D (2).

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### **F. Criteria for PLANNING BOARD Review of Proposed Amendments.**

The PLANNING BOARD shall provide to the City Council a report on each proposed amendment. The report of the PLANNING BOARD shall include the PLANNING BOARD's findings and recommendations on the following:

- (1) The consistency of the proposed amendment with the Master Plan;
- (2) The consistency of the proposed amendment with other plans, studies, or technical reports prepared by or for the PLANNING BOARD and the City;
- (3) The effect of the proposed amendment on the City's municipal services and capital facilities as described in the Capital Improvements Program;
- (4) The effect of the proposed amendment on the natural, environment, and historical resources of the City;
- (5) The effect of the proposed amendment on NEIGHBORHOOD including the extent to which nonconformities will be created or eliminated;
- (6) The effect of the proposed amendment on the City's economy and fiscal resources; and
- (7) The recommendation of the PLANNING BOARD relative to whether the proposed amendment should be adopted or rejected, and any recommendations for modifications to the proposed amendment.

### **G. City Council Action on Proposed Amendments.**

- (1) Setting a Hearing Date. Upon receipt of the PLANNING BOARD's report and recommendations on the proposed amendment, or upon the expiration of the sixty (60) day study period, the City Council shall establish a date for a public hearing and shall further publish and post a notice of such hearing as specified in Section D.
- (2) Waiver of Notice. In the event that the proposed amendment is comprehensive in nature, the aforementioned provisions requiring notice by first class mail to individual landowners and ABUTTERS may be waived by a majority vote of the full City Council, with respect to the public hearing to be held before it. An amendment shall be deemed to be comprehensive in nature if it affects more than one (1) of the zoning districts established by 170-7 of this Chapter. Under no circumstances may the provisions for publication of notice in a newspaper or posting of public notice contained in Section D (1) of this section be waived.

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- (3) Action on the Proposed Amendment. After holding the duly noticed public hearing on a proposed amendment, the City Council shall approve or disapprove the amendment. The City Council shall not have the right to overrule the PLANNING BOARD recommendations unless by a vote of not less than two-thirds (2/3) of its membership present and voting.
- (4) Protest Petition. If a valid protest petition, in accordance with RSA 675:5, has been filed against a proposed amendment, a favorable vote of two-thirds (2/3) of the City Council members present shall be required